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## PREFACE.

---

SINCE the last Edition of this Work was published in 1904 legislative measures, affecting conveyancing law and practice, have been passed, notably the Married Women's Property Act, 1907, the Linnacy Act, 1908, and the Finance (1909-10) Act, 1910.

It was ascertained that there was a general demand that the scope of this book, instead of being confined, in the main, to the everyday conveyancing matters in a solicitor's office, should be extended, as far as practicable, to cover the whole range of conveyancing practice, with the exception of company conveyancing.

To meet this demand, without unduly extending the size of the work, it was found to be necessary in most cases to abandon the principle of stock Precedents, to which reference was made in subsequent Precedents when variations occurred, and to adopt the familiar scheme of common Forms, followed by Precedents illustrating the use to which the Forms may be put.

An excessive use of cross-references to Forms in different parts of a volume may irritate the draftsman. It will be found that, with few exceptions, principally relating to long Forms in Realty Settlements, the references to Forms are confined to the Forms which immediately precede the collection of Precedents relating to one subject.

A complete numbered list is given before each set of

Forms to enable the draftsman to see at a glance the Forms he will require. The Precedents appear in the Table of Contents. In referring to each Form a sufficient description is generally given of the contents of the Form as well as its number.

A few comparisons will show that the new method has enabled the Editors to increase the amount of information to be gathered from the book to an extent which appears to be almost surprising. Thus, in the last Edition, there were 70 Special Conditions of Sale (Forms); in the present Edition there are 172. In the last there were 28 Precedents in Settlements (Personal); in the present there are 71 Forms and 24 Precedents. In the last there were 10 Precedents in Settlements (Real); in the present there are 86 Forms and 13 Precedents. In the last there were 23 Special Clauses and 33 Precedents of Wills and Codicils; in the present there are 85 Forms in Wills (Personal), 48 Forms in Wills (Real) and 34 Precedents of Wills and Codicils (Real and Personal). In some cases the number of the Precedents has been reduced; this is accounted for by the consolidation of several of the Precedents. Only obsolete matter has been struck out, but matter retained has been revised.

In addition to the increase in the Forms and Precedents, new chapters will be found on the new taxes on land values and on hints on drafting. That on drafting is, to some extent, elementary. In view, however, of the fact that this book is not used exclusively by polished draftsmen, it is hoped that it may be of practical value.

Special attention has been paid to the footnotes to the Forms and Precedents. These notes are mainly directed to practice points and to warn the practitioner against common mistakes of commission and omission.

It will be found that the Dissertations and Notes have not been neglected, and, so far as space has allowed, the effect of the respective cases cited is given. So far as possible, recent authorities have been substituted for old, and leading text-books have been freely referred to.

Of the new Precedents mention may be made here of the two Precedents of Executory Wills. Though a business man will cheerfully assent to complicated provisions being inserted in his marriage settlement, when it comes to carrying out a similar transaction by his Will he, unless he is peculiarly well informed or docile, expects his Will to be drawn as he would probably draw it himself. Obviously the only safe way to deal with such cases is to leave the machinery, if required, to be worked out when he is not there to see.

The recasting of this Edition by the Editors has been rendered possible by the acquisition of the copyright of the late Mr. Wolstenholme's "Forms and Precedents." It is hoped that the practical amalgamation of the two works may be found to be of service to the profession.

The success of "Prideaux" in the past must be attributed to the untiring energy and ability of Mr. JOHN WHITCOMBE, who became joint editor with the late Mr. F. PRIDEAUX in the year 1864. During Mr. WHITCOMBE's editorship, covering a period of forty years, the work went through sixteen editions.

Such an achievement has probably not been surpassed. Mr. WHITCOMBE has now retired from his arduous but congenial labours. The Editors feel sure that the hearty thanks and good wishes of the profession will be extended to him in his retirement. They consider it a privilege to be able to dedicate this present Edition to him, and trust that it will maintain the record of the past

In this Edition the separate Indices to the Notes and Dissertations have been amalgamated with the Indices to the Forms and Precedents. References therein to Forms and Precedents will be found in leaded or Clarendon type. Each index has been prepared by MR. GORDON FARRAR.

The Editors desire to thank DR. T. B. NAPIER for reading the Preliminary Note on land values and making suggestions thereon; MR. JULIAN Q. HENRIQUES for the preparation of the Precedents and Notes connected with patents; MR. A. TURNOUR MURRAY for revising parts of the Dissertations; and MR. R. M. C. MUNRO for assistance in parts of the work.

The Tables of Cases and Statutes have been prepared by MR. A. E. WILLIAMS (MR. CHERRY'S clerk), who has been of great service in the preparation of the Edition.

In a work of this size, particularly when so much new matter has been added, inaccuracies must occur. The Editors will be grateful to any member of the profession who will favour them with any corrections or suggestions for future Editions.

B. L. C.

R. B.

LINCOLN'S INN,

*December, 1910.*

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# ABBREVIATIONS.



|                                       |   |
|---------------------------------------|---|
| Agr. H. Act.....                      | Agricultural Holdings Act.                                    |
| Alpe.....                             | Alpe on the Stamp Acts.                                       |
| Austen-Cartmell .....                 | Austen-Cartmell on the Finance Acts.                          |
| Bankr. Act.....                       | Bankruptcy Act.   |
| Browne and Theobald.....              | Browne and Theobald on Railways.                              |
| B. S. Act.....                        | Building Societies Act.                                       |
| Carson.....                           | Carson's Real Property Statutes (based on Shelford R. P. S.). |
| Challis, R. P.....                    | Challis on Real Property.                                     |
| C. C. C. Act, or Companies C. C. Act. | Companies Clauses Consolidation Act.                          |
| Co. Lit.....                          | Coke upon Littleton.  |
| Conv. Act.....                        | Conveyancing Act.   |
| Cop. Act.....                         | Copyhold Act.   |
| Cru. Dig. or Cruise Dig....           | Cruise's Digest of the Law of Real Property.                  |
| Dan. Ch. F.....                       | Daniell's Chancery Forms.                                     |
| „ Ch. Pract.....                      | „ „ Practice.   |
| Dart.....                             | Dart on Vendors and Purchasers.                               |
| Elton.....                            | Elton on Copyholds.   |
| Ency. Forms and Prec.....             | Encyclopælia of Forms and Precedents.                         |
| F. & R. Act.....                      | Fines and Recoveries Act.                                     |
| Fin. Act.....                         | Finance Act.  |
| F. S. Act.....                        | Friendly Societies Act.                                       |
| Frend & Ware.....                     | Frend and Ware on Railways.                                   |
| Gale.....                             | Gale on Easements.  |
| Goddard.....                          | Goddard on Easements.   |
| Goodeve's Pers. Property....          | Goodeve's Personal Property.                                  |
| Highmore.....                         | Highmore on the Stamp Acts.                                   |
| Jarm.....                             | Jarman on Wills.  |
| Jud. Act.....                         | Judicature Act.   |
| Judg. Act.....                        | Judgments Act.  |
| L. T. Act.....                        | Land Transfer Act.  |
| L. T. R.....                          | „ „ Rules.  |
| L. C. C. Act, or Lands C. C. Act.     | Lands Clauses Consolidation Act.                              |
| L. Q. R.....                          | Law Quarterly Review.   |
| L. R. (Middlesex Deeds) Act, 1891.    | Land Registry (Middlesex Deeds) Act, 1891.                    |
| Lewin.....                            | Lewin on Trusts.  |
| Litt.....                             | Littleton on Tenures.   |
| L. G. Act.....                        | Local Government Act.   |
| L. Act .....                          | Lunacy Act.   |
| M. R. Act.....                        | Middlesex Registry Act.                                       |

|                            |  |
|----------------------------|--|
| M. W. P. Act.....          | Married Women's Property Act                       |
| Napier.....                | Napier, The New Land Taxes.                        |
| Norton.....                | Norton on Deeds.                                   |
| Palmer.....                | Palmer on the Companies Act.                       |
| P. H. Act.....             | Public Health Act                                  |
| R. C. C. Act.....          | Railways Clauses Consolidation Act.                |
| R. E. Act.....             | Real Estate Charges Act.                           |
| R. P. Act.....             | Real Property Act.                                 |
| R. P. Lim. Act.....        | Real Property Limitation Act.                      |
| Reed.....                  | Reed on the Bills of Sale Acts.                    |
| R. S. C.....               | Rules of the Supreme Court.                        |
| Scriv.....                 | Scriven on Copyholds.                              |
| Seton.....                 | Seton's Judgments and Orders.                      |
| S. L. Act.....             | Settled Land Act.                                  |
| Shep. Touchstone.....      | Sheppard's Touchstone.                             |
| Smith L. C.....            | Smith's Leading Cases.                             |
| S. D. Act.....             | Succession Duty Act.                               |
| Sug.....                   | Sugden on Vendors and Purchasers.                  |
| „ Pow.....                 | Sugden on Powers.                                  |
| Tud. R. P.....             | Tudor's Law of Real Property.                      |
| T. Act.....                | Trustee Act.                                       |
| V. & P. Act.....           | Vendor and Purchaser Act.                          |
| Wace.....                  | Wace on Bankruptcy.                                |
| Watk.....                  | Watkins on Copyholds.                              |
| Wh. & Tud. L. C. in Equity | White and Tudor's Leading Cases in Equity.         |
| Withers.....               | Withers on Reversions.                             |
| Wolst. Conv. Acts.....     | Wolstenholme's Conveyancing and Settled Land Acts. |
| Wurtzburg.....             | Wurtzburg on Building Societies.                   |
| Y. R. Act.....             | Yorkshire Registry Act                             |

## INTRODUCTORY DISSERTATION ON THE FINANCE (1909-10) ACT, 1910 (*u*).

THE Finance (1909-10) Act, 1910, which came into force on 29th April, 1910, is here dealt with so far only as it affects Conveyancing practice. Notwithstanding that books (*r*) have already appeared dealing exclusively with the subject, the provisions of the Act, particularly with regard to the duties on land values, are so complicated and involved that in many cases their meanings are matters only for conjecture. Judicial interpretation seems inevitable. Hence, it is considered sufficient to give a short statement of the new taxes and to indicate, so far as practicable at this early stage, their effect on conveyancing. The reader will of course have a copy of the Act and the rules made thereunder (*y*) before him.

### A. THE DUTIES ON LAND VALUES (*z*), PART I., SS. 1—12.

#### (i.) *Introductory Remarks.*

In reading Part I. of the Act, which imposes the duties on land values, it must be borne in mind that this Part of the Act contains its own dictionary which gives new meanings to words which have hitherto borne a particular legal meaning or restricts or varies the existing technical meanings. The definitions.

For instance, a “rent-charge” as defined by the Act is limited Rent-charge.

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(*u*) No excuse appears to be needed for placing this chapter first in this edition.

(*r*) See Napier, *The New Land Taxes*; Konstan's *Law of Land Values*.

(*y*) As to increment value duty, see I. V. D. Rules (under s. 4 of the Act as to stamps, etc.), (1910) W. N., Part II., 209; 129 L. T. Newsp. 88; and further rules (under s. 3 (2) and (3) as to collection of duty, etc.), (1910) W. N., Part II., 257; 129 L. T. Newsp. 291. As to appeals, see *Land Values* (Referee) Rules, 1910, (1910) W. N., Part II., 281; 129 L. T. Newsp. 453. See also addendum to Napier, which deals with the rules.

(*z*) Under s. 91 a moiety of these duties goes to local authorities

|                                  |   |
|----------------------------------|---|
| Incumbrance,                     | to a perpetual rent-charge, while an ordinary jointure rent-charge  |
| Term of a lease.                 | comes under the heading of an "incumbrance." Again, "the term of a lease" includes the period during which the original term may be prolonged under an option for renewal. Further,   |
| Fee simple and interest in land. | the expression "fee simple" is given the restricted meaning of "the fee simple in possession not subject to any lease," and does not include an undivided share in a fee simple in possession; while an "interest in land" includes any undivided share in a fee simple in possession and a reversion expectant on the determination of a lease, but not an expectant interest, nor incumbrances, or fixed charges as defined by the Act, or any purely incorporeal hereditament, or any leasehold interest for an original term less than fourteen years. Thus, it will be seen that a knowledge of these new definitions, which will be found in s. 41 (c), is essential before an attempt to understand Part I. of the Act can be made. But even after this knowledge is acquired the reader must go warily, as some sections place particular meanings upon words defined in s. 41. For instance, the word "owner" is given one meaning in s. 41, a second in ss. 8 (4) (a) and 18, a third in s. 27 (7), and a fourth in s. 40 (1) (c). Again, in the Increment Value Duty Rules, r. 16 (vi.), "interest in land" includes the fee simple. |
| Owner.                           |   |

### (ii.) *Site Value.*

|                        |  |
|------------------------|--|
| Site value.            | The increment value duty and the undeveloped land duty are (except in the case of minerals) taxes upon site values and necessarily involve a site valuation. S. 26, which may be called the Domesday Section, provides for the valuation of all land in the United Kingdom as on the 30th April, 1909. The process by which the site value is arrived at is complicated, but is understood to be somewhat as follows:— |
| Domesday Section.      |  |
| The four values taken. | Four values are taken by s. 25:—<br>Sub-s. (1) "Gross Value" referred to here as G. V.   |

---

(c) S. 12 supplies the construction to be placed upon words used in the Act in the case of property in Scotland.

Sub-s. (2) " Full Site Value " referred to here as F. S. V.

Sub-s. (3) " Total Value " " " " " T.V.

Sub-s. (4) " Assessable Site Value " " " " " A. S. V.

It should be noted that A. S. V. is the " site value " referred to throughout Part I. of the Act, but in the case of increment value duty, where " site value " on the occasion of the payment of duty on sales or leases is to be ascertained in the special manner provided by s. 2 (2) (a) and (b), the deductions prescribed in s. 25 (4) may be made; see also s. 32.

" Site value " is to be ascertained by the following process of elimination, which however, must be taken as a rough summary only of the complicated provisions of s. 25 (r). How site value is to be ascertained.

G. V. = the estimated market value of the fee simple free from incumbrances and from any burden, charge, or restriction, except rates and taxes. Gross value.

F. S. V. = G. V. — the difference between G. V. and the market value of the fee simple as a cleared or naked site, *i.e.*, divested of all buildings, structures, and growing produce. Full site value.

T. V. = G. V. — deductions in respect of :— Total value.

(1) Fixed charges.

(2) Public rights of way or user.

(3) Rights of common.

(4) Easements.

(5) Restrictive covenants imposed before the 30th April, 1909, of whatever nature.

(6) Restrictive covenants imposed after the 30th April, 1909, if, in the opinion of the Commissioners, either—

(i.) desirable in the interests of the public; or

(ii.) desirable having regard to the neighbourhood.

A. S. V. = T. V. — deductions as follows :—

(1) Same deductions as for arriving at F. S. V.

(2) Value directly attributable to capital expenditure on improvements for building or trade purposes, but not for agricultural purposes unless the expenditure also creates improvement for the former purposes.

(3) Value directly attributable to appropriation or gift of land for the purpose of streets, squares, gardens, or other open spaces for use of public.

Assessable  
site value.

(r) Owners may furnish their own valuations, and if they do so these will be considered by the Commissioners when making the original site valuation: s. 26 (3).

(1) Value directly attributable to expenditure upon—

- (i.) Redemption of land tax and fixed charges.
- (ii.) Enfranchisement of copyholds and customary freeholds.
- (iii.) Releasing restrictive covenants.

Deductions are also allowed in respect of increased value owing to goodwill or other matter personal to the owner, occupier, or other persons interested in the land.

(5) Amount required to clear site of buildings, trees, &c.

(iii.) *Original Valuation.*

Practice for  
fixing original  
site value.

S. 27 prescribes the practice to be followed for the purpose of arriving at the original site value. It is sufficient to state here that the Commissioners make a provisional valuation to which objections can be raised by the owner. If the value cannot be agreed, it is open to the owner (see the special meaning of owner in s. 27 (7)) to appeal under s. 33, in the first instance to one of the panel of referees to be appointed under the Act (*x*), and ultimately to the High Court or County Court (*y*).

S. 29 allows the Commissioners to assess any duty on pieces of land whether under separate occupation or not as they think fit. This power is one of very great significance in the scheme of the Act.

(iv.) *The New Land Duties.*

The four new  
duties.

The new duties are four in number:—

(1) Increment value duty : ss. 1—12 and, as regards minerals, s. 22.

(2) Reversion duty : ss. 13—15.

(3) Undeveloped land duty : ss. 16—19.

(4) Mineral rights duty : ss. 20—21.

Increment value duty, except in the case of minerals in lease or being worked, and reversion duty are payable by way of capital sums on particular occasions.

Increment value duty on minerals in lease or being worked, undeveloped land duty, and mineral rights duty are payable annually.

(*x*) See Land Values (Referee) Rules, 1910, (1910) W. N., Part II., 281; 129 L. T. Newsp. 453.

(*y*) Appeals may be made to the County Court where the Commissioners estimate the value under £500.

(v.) *Increment Value Duty (n).*

This is a duty of £20 per cent. payable in respect of the increase of site value accruing after the 30th April, 1909: s. 1 (1). Increment value duty.  
Rate of duty.

It is payable on the following occasions:— When payable.

(1) On the sale of the fee simple or any interest in land (*x*), in pursuance of any contract made after the commencement of the Act (*y*).

(2) On the grant of any lease for more than fourteen years in pursuance of any contract made after the commencement of the Act (*y*). The effect of this provision will probably result, in practice, in the limitation of terms to fourteen instead of twenty-one years. It must be borne in mind that the term of a lease includes any extension which may be obtained under an option for renewal.

(3) On death: s. 1 (b). This applies whether the property is settled or not, except in cases where estate duty is not payable under s. 5 of the Finance Act, 1894 (*z*).

(4) On the 5th April, 1914, and in every subsequent fifteenth year, by a corporate or unincorporate body holding the fee simple or any interest in land in such manner or on such permanent trusts that it is not liable to death duties: ss. 1 (c), 6 (1).

S. 2 defines increment value as the difference between the original site value fixed under the first provision and the site value on the date when the duty is payable. Definition of increment value.

Sub-s. (2) prescribes, subject to the deductions authorised by s. 25 (4), how the site value is to be ascertained when increment value duty is to be collected, viz.:— Site value in case of increment value duty.

(a) On the sale of the fee simple, the value of the consideration.

(b) On the grant of a lease or the sale of any interest in land, the value of the fee simple calculated on the basis of the

---

(*n*) These remarks do not apply to increment value duty on minerals, as to which see *inf.*

(*x*) See s. 41 for definitions of “fee simple” and “interest in land.”

(*y*) See s. 1 (a). If a contract is made before, its date should be recited.

(*z*) See s. 3 (4).

value of the consideration for the grant of the lease or the transfer of the interest (*x*).

Value of consideration on a sale or the grant of a lease.

Reference should be made here to s. 32, which provides how the value of the consideration is to be determined on a sale or the grant of a lease, *i.e.* :—

(1) Where the consideration is a capital sum, the value of the consideration is the amount of the capital sum. In a building lease, it is conceived that this would include the costs of the builder in erecting the buildings as well as a fine.

(2) Where the consideration is a periodical payment, the value of the consideration is the estimated capital value of the periodical payment.

(3) Where covenants are entered into to discharge incumbrances, and (where the rent is nominal) to build or to expend money on the premises, but in these cases only, an addition is to be made to the value of the consideration.

(c) On death, the principal value of the land as ascertained for the purposes of the Finance Act, 1894, Part I. Under s. 23 (2) minerals not in lease and unworked are treated as having no value unless the owner declares one. This would not affect their value for purposes of estate duty.

(d) On a periodical occasion in the case of corporate and unincorporate bodies, the “total value” (*y*) of the land on that occasion.

But in all these cases numerous deductions must be made from the consideration or the value of the site, as the case may be, for the purpose of eliminating, from the sum finally arrived at, everything but site value; see s. 2 (2) and s. 25 (2), (3) and (4).

General provisions as to collection of duty.

S. 3 contains general provisions as to the collection of the duty and allowances to be made (*z*), including 10 per cent. reduction of the increment value.

S. 3 (6) and s. 4 are important from a conveyancing point of view.

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(*x*) This provision is very complicated; see Napier, p. 18.

(*y*) See s. 25 (3).

(*z*) See also I. V. D. further rules, (1910) W. N. 257; 129 L. T. Newsp. 453.

By the former, capital increment value duty is made a stamp duty.

Increment value duty a stamp duty.

S. 4 deals with the collection and recovery of duty in cases of sales and leases.

Provisions as to collection of the duty in cases of sales and leases.

Sub-s. (1) makes the duty payable by the transferor or lessor.

Sub-s. (2) provides (*c*) for the production to the Commissioners of the instrument by which the transfer or lease is effected or agreed to be effected, or reasonable particulars thereof for the purpose of assessment, subject to a penalty for default.

Sub-s. (3) provides that an instrument shall not be deemed duly stamped unless it is stamped with—

- (a) A stamp denoting that the duty has been assessed and paid ; *or*
- (b) A stamp or certificate on the deed denoting that the necessary particulars for assessment have been furnished and security for payment given where required (this is at present the usual case) ; *or*
- (c) A stamp denoting that no duty is payable.

Sub-s. (4) makes the duty a debt due to the Crown from the transferor or lessor. For the purpose of calculating the amount of duty to be collected on a subsequent occasion the duty assessed is to be deemed paid.

The result of these provisions is that on a sale or the grant of a lease the instrument to be delivered by the vendor or lessor to the purchaser or lessee is to be stamped by the vendor or lessor. Under this peculiar provision, apart from express arrangement, delay might occur in completion, if any difficulties arise as to the assessment between the vendor or lessor and the Inland Revenue. Hence, it will be found desirable in conditions of sale and contracts to provide that completion shall not be postponed on account of delay in assessment of duty, so that if there is delay in getting the conveyance stamped the purchaser will not be entitled to repudiate his bargain, and will remain liable to pay interest on the purchase-money. Further, as no doubt the authorities will require the production of previous documents, it will be necessary to provide that the purchaser or lessee shall produce all necessary documents, including his conveyance

Effect of provisions as to collection of duty in case of sales and leases.

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(*c*) See also I. V. D. Rules, (1910) W. N., Part II., 209; 129 L. T. Newsp. 88.

or lease, which may be required for the purposes of the assessment (*x*).

Contracting  
out.

On the other hand, it will be noted that the Act contains no express provision against "contracting out." A special condition will be found (*y*) making the purchaser indemnify the vendor against the duty; but as a purchaser may be placed in difficulties by such a condition it must be considered deterrent at an auction.

Remission of  
duty payable  
by instalments  
where lease  
determines  
prematurely,  
&c.

Sub-ss. (5) and (6) and the I. V. D. Rules 2—16 (*z*) provide for the making of further regulations and the remission of duty where a lease determines before all the instalments are paid or if the transaction falls through.

Stamp on  
contracts.

Under sub-s. (7) and the Increment Value Duty Rules, r. 7, a contract for a sale or lease may be stamped, and a stamp denoting the payment of duty placed on the instrument which carries the agreement into effect. The denoting stamp will avoid bringing the contract on the title. The rule provides that agreements for transfers intended to be followed "shortly" by actual conveyances need not be stamped, but this does not apply to an agreement for a lease. Hence, it would seem that, in the view of the Inland Revenue authorities, in the case of contracts which are not to be carried into effect for some time (*e.g.*, where the purchase-money is payable by instalments and completion is postponed until the last instalment is paid) and in the case of agreements for leases, the contract should bear the stamp, and the conveyance or lease a denoting stamp. If the contract falls through the duty will be returned: s. 4 (6); r. 17.

It may perhaps be doubted whether this view gives full effect to the apparent option conferred by s. 4 (2) of paying on "the instrument by which the transfer or the lease is effected or agreed to be effected."

Reason for  
owner to build.

In order to be in a position to claim the deduction authorised

(*x*) See Clause 9 of General Conditions of Sale by Auction, p. 217. *inf.*

(*y*) See Form No. 159A, special conditions, p. 205, *inf.*

(*z*) (1910) W. N., Part II., 209; 129 L. T. Newsp. 88.

by s. 25 (4) (b) it may become the practice for owners to find the money for building purposes instead of leaving this matter to the building lessee.

With regard to increment duty payable on a death, s. 5 in effect charges the duty on the particular property on which the duty is payable, and leaves the Crown as a creditor *pari passu* with other creditors against the rest of the estate. Hence, a purchaser must, as in the case of estate duty, satisfy himself that increment duty has been paid in such a case. In no other case is the duty a charge on the land.

Where duty attaches on death it is a charge.

Ss. 7—11 contain certain allowances and exemptions in the case of agricultural land (which has no higher value than for agricultural and sporting purposes), small houses and properties of certain value and sizes, land held by a body corporate or unincorporate and used for recreation where the user is likely to continue, Crown and Government lands, and flats.

Exemptions from increment value duty.

A deduction for purposes of increment value must be claimed when the original site value is being fixed if the deduction is one which could have been then claimed: s. 12.

When objections to valuation must be made.

It has been seen that increment value duty is payable under s. 1 (b) on the death of a person dying after the commencement of the Act (29th April, 1910).

Application of provisions as to estate duty where increment value duty is payable on a death.

Under s. 5 the provisions as to "assessment, calculation, and recovery of estate duty under the Finance Act, 1894, shall apply as if increment value duty to be collected on the occasion of the death of any person were estate duty; but, where any interest in land in respect of which increment value duty is payable is property passing to the personal representative as such, the duty shall be payable out of that interest in land in exoneration of the rest of the deceased's estate, and shall be collected upon an account to be delivered by the personal representative setting forth the particulars of the increment value in respect of the property."

Hence, it appears that in all cases increment value duty payable on death is charged on the property in respect of which it is payable. Purchasers, either from personal representatives, trustees, or devisees, will necessarily have notice that such a claim

Possible effect of stamp on a later conveyance.

may have arisen, and until it is settled that the increment value duty stamp on a conveyance franks the land from all past increment value duty they should require to be satisfied that the increment value duty payable on the death in question has been discharged (*x*).

What provisions of Fin. Act, 1894, are made applicable.

Exactly what are the provisions of the Finance Act, 1894, relating to the "assessment, calculation, and recovery" of estate duty which apply to increment value duty is a difficult question.

Position of purchasers from corporate and unincorporate bodies.

Increment value duty is payable by bodies corporate and unincorporate on the 5th April, 1914, and in every subsequent fifteenth year: s. 6 (1). The duty is to be assessed on the accounts delivered by the body under s. 15 of the Customs and Inland Revenue Act, 1885. Under s. 14 of that Act the duty is a charge on all the property in respect whereof the same is payable while such property remains in the possession or under the control of the body chargeable therewith or of any party acquiring the same with notice of any such duty being in arrear. Purchasers and mortgagees of land of a body corporate or unincorporate must therefore carefully consider their position under s. 6 of the Fin. (1909-10) Act, 1910 (*y*).

#### (vi.) *Reversion Duty*, ss. 13—15.

Reversion duty.  
Rate of duty and when payable.

This is a duty of £10 per cent. on the amount by which the "total value" (*z*) at the determination of a lease (which includes an agreement for a lease (s. 41)), after deducting capital expenditure by the lessor during the lease, and compensation payable by him at its determination, exceeds the total value at the time of the original grant of the lease: s. 13 (1) (2).

How "total values" to be ascertained.

The total value at the determination of the lease is the total value as defined under the general valuation provisions of the Act. The total value at the time of the original grant of the lease is to be ascertained on the basis of the rent received and

(*x*) See Napier, 42 to 57.

(*y*) For a further discussion of their position, see Napier, 61, 62.

(*z*) See s. 25 (3).

payments made in consideration of the grant of the lease, including, in cases where the rent is nominal, the value of any covenant to erect buildings or to spend money on the property: s. 13 (2).

Where the lessor holds only a leasehold interest the amount of the benefit accruing to him at the end of the lease is to be reduced in proportion to the difference in value between the leasehold and freehold interest: s. 13 (2).

Where lessor is a lessee.

S. 14 contains certain exemptions and allowances, namely:—

Exemptions and allowances.

Sub-s. (1) Where the reversion was purchased before the 30th April, 1909, and the lease expires within forty years from the date of purchase. This is subject to a qualification as to a premature determination of the lease by agreement between the lessor and lessee not contained in the lease itself.

Sub-s. (2) (i.) Where the land is agricultural land at the end of the term.

(ii.) Where the original term did not exceed twenty-one years (*x*). This provision will doubtless tend to restrict the period granted in future leases.

(iii.) Where the reversion of the lessor does not exceed a twenty-one years term.

Sub-s. (3) Allowances are authorised where a term is surrendered and a new lease granted for a term exceeding twenty-one years from the date when the original term would have expired.

Sub-s. (5) Where a mortgagee has foreclosed a reversion he is not liable to pay reversion duty in excess of the amount by which the total value of the land at the time of the determination of the lease exceeds the amount payable under the mortgage at the date of the foreclosure.

S. 22 (1) exempts minerals from reversion duty on the determination of a mining lease.

S. 15 contains provisions for the recovery of the duty from the lessor. The lessor must make a return (subject to a penalty) within three months from the determination of the lease.

Recovery of the duty.

The Act does not charge the reversion duty on the property itself, and it appears to be payable by the person who is lessor at the date of the determination of the lease. It does not seem, therefore, that a purchaser with notice that the duty has not

Notice of expired leases.

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(*x*) *I.e.*, including a renewable period: s. 41.

been paid incurs any liability to pay it, either personally or by means of a charge on the property; nevertheless, for the present and until the practice is clearly settled, or there has been a decision upon the subject, it would be wise for a purchaser of property, a lease of which has recently expired, to ascertain that the reversion duty has been paid.

Where lessee purchases the reversion.

Where a lessee purchases the reversion it is conceived that no reversion duty becomes payable by reason of the merger of the term, for no benefit accrues to the lessor "by reason of the determination of the lease": s. 13 (1). In some cases the reversioner may obtain a larger price by selling to his lessee (*e.g.*, where the lessee considers some goodwill attaches to the property), but this is a personal matter and in no way dependent on the determination of the lease. By s. 13 (2) the meaning of the "value of the benefit" is explained for the purposes only of that section, but it does not say that the duty shall be paid on a benefit which accrues otherwise than "by reason of the determination of the lease." Again, under s. 15 the duty is only made recoverable from a lessor to whom a benefit accrues "from the determination of a lease." It cannot be intended that the lessee should pay the duty, he never acquires a reversion. See definition of "Lessor" in s. 1. Clearly the duty would not attach on a sale to a stranger. If the Courts hold that the duty is payable, then every reversioner will insist, by a condition of sale, on the term being kept on foot.

Thus conveyancing will be rendered more complicated, while the Inland Revenue will gain little or nothing. A vendor of a reversion will require some evidence that his purchaser is not the lessee.

Contracting out.

Although there is no express provision against "contracting out," it is assumed that no lessee would undertake to pay the duty at the end of his lease.

Case where reversion duty should be thrown on a purchaser.

If, however, a lessee agrees to purchase the reversion expectant on his lease, the vendor will, till the point is settled, insist on the lessee either agreeing to pay or indemnify him against any

reversion duty attracted by the sale, or arranging to keep the term on foot.

If a builder contemplates purchasing the fee simple instead of taking up a building lease, it may be desirable merely to give him a right of entry in the building agreement with alternative options either to take a lease or purchase. Otherwise the building agreement might be held to be a lease.

(vii.) *Undeveloped Land Duty*, ss. 16—19.

This is an annual duty of one halfpenny in the pound on the site value of land which has not been developed by the erection of dwelling-houses or buildings for the purposes of business, trade, or industry other than agriculture, or is not otherwise used in good faith for the same purposes : s. 16 (1) and (2).

Undeveloped  
land duty.  
Rate of duty  
when payable.

The site value for the purpose of this duty is the original site value (x), or the varied site value fixed under the periodical valuation to be made every five years as provided by s. 28.

Site value.

Land having been once developed may become “undeveloped” by disuser : s. 1 (2) (a).

Disuser.

The following deductions and exemptions are allowed :—

Deductions  
and exemp-  
tions.

S. 16 (2) (b) Every £100 expended on the land by the owner frees one acre from the duty.

S. 17 (1) All site values under £50 per acre are exempt.

S. 17 (2) Agricultural land, whether the site value exceeds £50 an acre or not, is exempt, except in respect of the amount by which the site value exceeds the value for agricultural purposes.

S. 17 (3) (a) and (b) Public parks, &c., and other parks, &c., where reasonable facilities are given to the public or for use for military purposes are exempt.

S. 17 (3) (c) Exemption is allowed where the land is left undeveloped under a definite scheme in the interests of the public or the neighbourhood.

S. 17 (3) (d) Land used for recreation is exempted if the user is likely to continue.

The opinion of the Commissioners as to certain points connected with the above exemptions is final and not subject to appeal.

S. 17 (4) exempts certain houses and gardens.

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(x) See s. 25.

S. 17 (5) exempts all agricultural land held under a tenancy created before the 30th April, 1909, whether the site value exceeds the agricultural value or not, but the exemption ceases at the earliest moment the lessor can determine the term.

S. 18 exempts agricultural land, whether the site value exceeds the agricultural value or not, which is occupied and cultivated by the owner, where the site value of his whole holding does not exceed £500. In this section the word "owner" includes a lessee for an "original term" of fifty years or more as opposed to the definition in s. 41 which includes a lessee with fifty years or more "to run."

A "definite scheme" exemption imposes a restrictive covenant.

An important point to notice is that if an exemption is obtained under s. 17 (3) (c) on the grounds of a definite scheme the exemption operates as an imposition of a restrictive covenant on the land; see proviso following s. 17 (3) (d). The restriction can only be removed with the leave of the Local Government Board. Hence, before claiming the exemption it is necessary to consider how a restrictive covenant against the erection of buildings, which covenant may be irremovable, will affect the property in the future.

Contracting out.

S. 19 precludes the owner from "contracting out." He cannot place the burden on his lessee.

#### (viii.) *Mineral Rights Duty.*

Mineral rights duty.

Mineral definitions.

Rate of duty.

Rental value.  
How to be  
ascertained.

Before reading ss. 20—23, which deal with minerals, a further dictionary must be studied, namely, the definitions in s. 24, which apply to the wording of these sections.

Mineral rights duty, which is imposed by s. 20, is an annual duty of £5 per cent. on the rental value of all rights to work minerals and of all mineral wayleaves.

The rental value (except where it exceeds the customary rental in the district owing to capital expenditure by the lessor, in which case the customary rental is to be taken) is to be ascertained under s. 20 (2) as follows:—

(i.) Where there is a mining lease, the rental value is the rent paid by the working lessee during the last working year (*x*).

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(*x*) See definition of "working year": s. 24.

(ii.) Where the proprietor (*x*) works himself, the rental value is the estimated rent which would have been obtained during the last working year, according to the custom of the district and having regard to the actual working by the proprietor, if the rights of working had been let.

(iii.) In the case of mineral wayleaves, the rental value is the amount of rent paid by the working lessee during the last working year.

Proprietors must make returns : s. 20 (3).

Returns.

S. 20 (4) precludes the proprietor from contracting out.

Contracting out.

S. 20 (5) exempts common clay, &c., from the duty. Hence, in mining leases it will now be found desirable to fix separate royalties in respect of these exempted substances. Where a minimum rent is fixed by the lease it may also be found advisable to apportion it in the lease as between the exempted substances and the other minerals demised.

Exemptions of clay, &c.

S. 21 (1) enables an intermediate lessor to deduct the duty from his rent as in the case of income tax; sub-s. (2) repeats the prohibition against "contracting out," and sub-s. (3) imposes a penalty if the lessor does not allow the deduction to be made.

Deduction of duty by intermediate lessor.

#### (ix.) *Increment Value Duty on Minerals.*

The effect of ss. 22 and 23 seems shortly that—

(1) No duty is charged in the case of minerals leased (*y*) or worked on the 30th April, 1909, so long as they continue to be worked (without intermission for any period exceeding two years): s. 22 (2).

Increment value duty on minerals.

(2) In other cases where the minerals are leased or worked the duty is an annual one, the increment value being reckoned as the sum by which the rental value on which mineral rights duty is charged exceeds the "annual equivalent" (*i.e.*, two-twenty-fifths of the capital value) of the original capital value of the minerals (*z*), or the capital value of the minerals on the last

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(*x*) See definition of "proprietor": s. 24.

(*y*) Minerals worked by a lessee "holding over" are deemed to be comprised in a mining lease: s. 24.

(*z*) "Minerals" here does not include the excepted minerals stated in s. 20 (5), *i.e.*, common clay, &c.; see s. 22 (8).

preceding occasion on which increment value duty has been collected otherwise than as an annual duty, if increment value duty has been collected before the minerals are leased or worked: s. 22 (3).

(3) A reduction is allowed in respect of capital expenditure by the lessor incurred in respect of boring, &c., within fifteen years: s. 22 (4).

(4) As the increment value duty payable annually is to be recoverable as mineral rights duty with the same right of deduction (s. 22 (5) ), it is conceived that a lessor is precluded from "contracting out" of the duty (*y*).

(5) As soon as minerals cease to be worked or comprised in a lease they are to be valued: s. 22 (7). S. 23 prescribes the method of valuation, and the minerals are to be treated as a separate parcel of land (*z*). The provisions of s. 25 do not apply to a valuation of minerals: sub-s. (5). If the minerals are sold capital increment value duty attaches under s. 2 (2) (a), unless they are comprised in a mining lease or being worked: s. 22 (3). S. 32 enables apportionments to be made between surface and minerals on a sale or lease. It will be noted that a proprietor of minerals which are not worked or let at the date when the Act takes effect need not have his minerals valued. It is a matter for consideration whether the proprietor should have the minerals valued with a view to diminishing duty on sale or lease and thereby run the risk of additional estate duty or whether he should do nothing and pay the full increment duty on a sale. Where an immediate sale is contemplated a valuation is of course desirable to avoid the full duty. As no capital increment duty is payable on the grant of a mining lease (s. 22 (1) ) nor reversion duty payable on its determination, and the existence of the lease appears to prevent capital increment value duty from becoming payable on the sale of the reversion or on the death of

Reason for  
granting  
mining leases.

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(*y*) See s. 21 (2).

(*z*) S. 23 (2).

the reversioner (s. 22 (3)), it seems that mine owners will be well advised to grant mining leases as soon as practicable. If the mines are not expected to come into work for some time, a low minimum rent will be reserved till the mines are expected to be worked; thus the mineral rights duty and the annual increment duty will be kept down to a very low figure.

(x.) *General Exemptions from and Allowances in respect of the Duties.*

General exemptions from all duties.

The Act contains the following general exemptions with regard to particular bodies and institutions :—

- S. 35 exempts “rating authorities” (*u*) from all duties.
- Rating authorities.
- S. 37 relates to charitable institutions (including companies “not for profit” and friendly societies which may include trade unions registered under the Friendly Societies Act, 1896).
- Charities.

Land occupied for the purposes of a charity is exempt from reversion duty and undeveloped land duty.

Land, whether so occupied or not, is exempt from periodical increment value duty (*x*).

No reference is made to mineral rights duty; the increment value duty is not to be “deemed paid” for the purpose of future duty on a sale or lease.

- S. 38 exempts statutory companies (*y*) from all duties, except mineral rights duties, in respect of land held for the purposes of their undertaking which cannot be appropriated, except temporarily, for other purposes. The cost value on purchase is the “original site value” in this case and the only return to be made. Increment value duty is not to be reckoned as part of the costs of a conveyance of land for the purpose of the Lands Clauses Acts.
- Statutory companies
- Cost under L. C. C. Acts.

Under s. 36 (*z*) a general allowance is made in respect of

Capital sums paid to rating

(*u*) Defined sub-s. (2).

(*x*) See s. 1 (c).

(*y*) Defined sub-s. (4).

(*z*) See Konstam, 279, as to this.

authorities  
for improve-  
ments.

capital sums paid to a rating authority which are applied in improvements.

The amount of these capital sums is to be deducted in estimating—

- (i.) Increment value for the purpose of increment value duty.
- (ii.) Site value for the purpose of undeveloped land duty.
- (iii.) The benefit accruing to the lessor in the case of reversion duty.

(xi.) *Deductions and Set-offs where more than one Duty attaches.*

Deductions,  
&c., where  
more than one  
duty attaches.

Deductions or set-offs are allowed where more than one duty is payable by the following sections:—

S. 14 (4) Where increment value duty and reversion duty attach.

S. 16 (3) Where increment value duty and undeveloped land duty attach.

S. 22 (6) Where annual increment value duty and mineral rights duty attach.

S. 62 Where increment value duty and estate duty attach.

(xii.) *Limited Owners, Trustees, and Mortgagees.*

Power to  
tenants for  
life and  
trustees to  
charge settled  
property for  
repayment  
of increment  
value duty  
and reversion  
duty.

S. 39 (1) provides that where the fee simple of any land or any interest in land (*x*) in respect of which “increment value duty or reversion duty” is charged is settled within the meaning of the S. L. Act, 1882 (*y*), or is vested in a trustee and the tenant for life or the persons having the powers of a tenant for life, or the trustee is the person who is liable to pay any sums on account of either of these duties, he shall be entitled “to charge by deed” upon the land or interest in land any amount paid by him or which he may then be “or may thereafter become liable to pay” in respect of either of these duties, and the amount of any expenditure which he may have reasonably incurred in

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(*x*) See definition of “fee simple” and “interest in land”: s. 41.

(*y*) See Wolst. Conv. Acts, 9th ed., 325 *et seq.*, as to what constitutes a settlement within the meaning of this Act.

connexion with the valuation, and the benefit of any such charge may be transferred in like manner as a mortgage.

This sub-section does not enable a limited owner or trustee to raise money by mortgage for the purpose of paying the two duties in the ordinary way, but only to create a charge by deed in his own favour for recouping himself and to raise the money by transferring the charge if a transferee can be found (*c*). The wording is ambiguous. It is not clear whether any part of the settled property may be charged or only the particular part of the property in regard to which the duties are payable. In any case the charge should be restricted as much as possible, and in all ordinary cases confined to the property in respect of which the duties are payable. Again, the words "or may thereafter become liable to pay" are not at all clear. It is assumed that they refer to the case where the duty is payable by instalments. If not, they give power to create a charge for an indefinite amount which would operate as a great burden on land. Wherever practicable the duties should be paid when the transaction upon which they attach takes place, either out of proceeds of sale or capital money.

Effect of  
s. 39 (1).

In the case of settlements under the S. L. Act, 1882, when the charge has been created, it is conceived that it can be discharged in either of the following ways:—

Settlements  
under the  
S. L. Act, 1882.

(1) Out of capital money where there is capital money in the hands of the trustees: S. L. Act, 1882, s. 21 (ii).

(2) Where there is no capital money in the hands of the trustees by a mortgage under S. L. Act, 1890, s. 11.

Under s. 39 (2) the deed of charge has no effect unless notice is given to the S. L. Act trustees.

Notice to  
S. L. Act  
trustees.

S. 39 (3) applies ss. 51, 60, and 62 of the S. L. Act, 1882, and so confers the benefit of the section on trustees acting on behalf

Infants and  
lunatics.

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(*c*) Cf. the case of estate duty which attaches automatically as a charge: *Lord Advocate v. Countess of Moray*, 1905, A. C. 531; 74 L. J. P. C. 122. Increment value duty only becomes such a charge on death: s. 5.

Receiver or  
*quasi-com-*  
*mittee.*

of infants and committees of lunatics. However, s. 1 of the Lunacy Act, 1908, is not referred to, hence it is not quite clear whether the benefit extends to the receiver or *quasi-committee* of a lunatic not so found (*c.*).

Where land  
vested in a  
trustee.

Where land is vested in a trustee, and the S. L. Acts do not apply, it is assumed that the trustee, after executing a charge in his own favour, may reimburse himself out of any trust money in his hands under s. 24 of the T. Act, 1893.

Power of sale.

It is conceived that the charge being by deed will have as incident thereto the power of sale under the Conv. Act, 1881. But if this is so, to whom is the trustee, who is both chargor and chargee, to give notice under s. 20 of the Conv. Act, 1881?

Interest.

The power of charging is silent as to interest. It would seem that the chargor would be entitled to interest from the date of payment of the duty.

General  
position of  
trustees.

The effect of the Act upon the powers and duties of trustees will require careful consideration. Trustees are of course liable as other persons for the payment of the various duties payable under the Act, and where such duties are properly paid by them it is clear that they will be entitled to an indemnity out of the trust property. Their real difficulties will arise when they have to consider whether they should incur expense in relation either to the general valuation under s. 26 or the periodical valuation under s. 28, or as to any valuation or other matter connected with an assessment of duty on a particular occasion. No general advice can well be tendered to them. They are doubtless entitled to their reasonable costs out of the trust estate for the purpose of verifying any claim by the Inland Revenue not obviously sustainable. Where reasonable doubts can be entertained they must examine a claim. If their beneficiaries are all *sui juris* the trustees should act in consultation with them. If they are not all *sui juris* it may be advisable, in case a serious outlay

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(*c.*) See *Re S. S. B.*, 1906, 1 Ch. 712; 75 L. J. Ch. 522; *Re De Moleyns and Harris*, 1908, 1 Ch. 110; 77 L. J. Ch. 9.

or litigation is in prospect, to take the opinion of the Court under O. 55, r. 3.

S. 39 (4) enables a mortgagee to add to his security any increment value duty or reversion duty for which he is liable, and any costs and expenses incurred in respect of the duties. Hence, an intending mortgagee, in estimating the value of his proposed security, must remember that the mortgaged property may be called upon to bear something in addition to the principal and interest originally secured. It will also be usual to insert a covenant by the mortgagor for payment of all duties which may become payable during the subsistence of the security.

Mortgagees.

Covenants by mortgagor.

The power of charging is not applied to undeveloped land duty or mineral rights duty which, it is assumed, must be paid out of income.

#### (xiii.) *Copyholds and Customary Freeholds.*

S. 40 deals with copyholds and customary freeholds.

Copyholds and customary freeholds.

By sub-s. (1) it is provided that in the case of copyholds of inheritance or for lives, "with a perpetual right of renewal," or in the case of customary freeholds—

Copyholds of inheritance and for lives, where renewable, and customary freeholds.

(a) The total and site values are to be ascertained as if the property were freehold, but with a reduction in respect of the cost of enfranchisement.

(b) References in Part I. to the fee simple are to be treated as references to the whole copyhold or customary interest or estate.

(c) References in Part I. to "owners" are to be treated as references to the persons entitled to the rents and profits as tenant by copy of court roll or customary tenure.

Sub-s. (2) provides that in the case of copyholds for lives which are not renewable Part I. is to have effect as if the land were freehold and the copyhold interest were a leasehold interest.

Copyholds for lives not renewable.

## B. DUTIES ON LIQUOR LICENCES, PART II., SS. 43—53.

Part II. of the Act imposes duties on liquor licences. It will be sufficient here to draw attention to two points.

Tied houses. S. 46 provides that in the case of “tied houses” the licence holder, who is tied, shall be entitled, “notwithstanding any agreement to the contrary,” to recover as a debt due from or to deduct from any sum due to the brewer so much of any increase of the duty payable in respect of his licence occasioned by the Act as may be agreed upon or, in default of agreement, determined by the Commissioners as thereby provided. In other words, in a lease by brewers to a tenant who is tied, a covenant by the tenant to pay the whole additional duties will be ineffectual.

Clubs. S. 48 (3) enables the Commissioners in the case of a club to distrain upon the premises for the purpose of recovering the duty.

Where licensed property is settled the trustees should be given full powers to surrender onerous licences, &c.

## C. DEATH DUTIES, PART III., SS. 54—64.

Alterations in death duties. Part III. imposes additional death duties. These are dealt with in Vol. II. at the end of the Dissertation on Wills.

The following brief notes may be found useful:—

(1) Estate, settlement estate, legacy, and succession duties are increased: ss. 54 and 58.

Duties between husband and wife. (2) Estate duty under s. 58 (2) does not cover the 1 per cent. legacy and succession duty, which is now also made payable as between husband and wife, except where—

- Exceptions.
- (a) The estate as valued for estate duty does not exceed £15,000; *or*
  - (b) The value of the legacy or succession does not exceed £1,000; *or*
  - (c) The legatee is the widow or infant child of the testator, intestate, or predecessor, and the whole interest taken by the legatee does not exceed £2,000 in value.

(3) The decision in *A.-G. v. D. of Richmond* (c) is reversed: *A.-G. v. D. of Richmond*, s. 57.

(4) Land may be conveyed free of stamp duty to the Commissioners in satisfaction of the whole or any part of the estate, settlement estate, or succession duties if the Commissioners will accept it (s. 56), but it is conceived that trustees should not do this unless expressly authorised or unless all the beneficiaries are *sui juris* and concur. Conveyance to Commissioners.

(5) As regards gifts *inter vivos*, except on marriage or as part of the normal expenditure of the deceased, the period during which the donor must now live to escape estate duty is extended from one to three years except as regards gifts before the 30th April, 1908, or made for public or charitable purposes. Where the donor retains any interest in the gift the period runs from the date he divests himself of that interest: s. 59. Three years period.

(6) The method of valuing the property of the deceased is altered. The market value at the death is to be taken and no reduction made on the assumption that the whole property will be sold at the same time. Appeals against assessments by the Commissioners on real or leasehold property now lie first to one of the panel of referees to be appointed under s. 33 and thence to the High Court or County Court according to the value: s. 60. But the provisions of the Fin. Act, 1894, s. 7 (5) as to agricultural property still apply in the case of yearly tenancies: s. 61 (1). Valuation.

(7) In the case of property valued under £300 or £500 (see Fin. Act, 1894, s. 16 (1)) existing charges originally effected for raising the purchase-money or for securing unpaid purchase-money may be deducted upon valuation: s. 61 (2). Mortgages for raising purchase-money.

(8) Where there is timber on the land it is included in the valuation for estate duty, but the duty only becomes payable on the sale of the timber with interest from the date of the receipt of Timber.

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(c) 1909, A. C. 466; 78 L. J. K. B. 998.

the proceeds of sale. This applies also to succession duty payable in respect of woodlands: s. 61.

Reversionary interests.

(9) Purchasers and mortgagees of reversionary interests who purchased or took mortgages before the 30th April, 1909, are exempt from the new death duties. Where a mortgagor is liable the charge for duty ranks after the mortgagee's security: s. 64.

These points must be borne in mind in investigating titles.

#### D. INCOME TAX, PART IV., SS. 65—72.

Income tax.

This tax does not affect the practice of conveyancing, and the provisions imposing increased taxation on incomes cannot be properly considered here. In passing, however, it may be well to point out the necessity of keeping careful accounts of money expended on the maintenance, repairs, &c., of land and buildings so as to enable the owner to claim the relief afforded by s. 69.

#### E. STAMPS, PART V., SS. 73—79.

Stamp duties (x).

References to stamp duties will be found throughout this work according to the nature of the particular instruments.

The following notes deal shortly with the innovations introduced by the Act:—

On conveyances or transfers on sale.

(1) The stamp duties chargeable under the heading "Conveyance or Transfer on Sale of any Property" (y) in the First Schedule to the Stamp Act, 1891, are doubled: s. 73.

The section does not apply to—

Stocks and marketable securities.

(i.) The conveyance or transfer of any stock or marketable security as defined in s. 122 of the Stamp Act, 1891.

Disposition for £500 and under.

(ii.) A conveyance or transfer, where the consideration does not exceed £500 and the instrument contains a statement

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(x) See the memorandum on these duties issued by the Law Society, 54 Sol. J. 858.

(y) See Alpe, 9th ed., p. 100 *et seq.*, as to what transactions come under this heading.

certifying that the transaction thereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £500 (*x*).

(2) The stamp duties chargeable under the heading “Lease or Tack” in the First Schedule to the Stamp Act, 1891, are doubled except in the case of yearly or shorter tenancies of dwelling-houses at rents under £10 per annum : s. 75. On leases.

(3) The stamp duties on certain marketable securities are doubled : s. 76. On marketable securities.

(4) Stamp duties are charged on contract notes according to the value of the stock or marketable security sold or bought : ss. 77, 78. On contract notes.

(5) Under s. 74 a voluntary conveyance or transfer (that is to say (*y*) any conveyance or transfer not being a sale, mortgage, or other disposition made in good faith and in the opinion of the Commissioners for valuable consideration) is chargeable with the like stamp duty as a conveyance or transfer on sale, the value of the property conveyed or transferred being taken as the amount upon which the *ad valorem* duty is payable. Voluntary dispositions and voluntary settlements.

No particular method of valuing the property is prescribed.

This new duty is not payable on conveyances and transfers in the following cases :— Exceptions.

(i.) Where the consideration is marriage : sub-s. (5). Marriage.

(ii.) Where a voluntary conveyance or transfer is made to any body which is precluded from dividing any profit among its members and the property conveyed is to be held as an open space or for preservation for the benefit of the nation : sub-s. (1). Open spaces where grantees are bodies not for profit.

(*x*) The exemption apparently does not apply where, in the case of a building estate, leases are granted in consideration of a premium not exceeding £500 paid by the lessee in respect of the building : 54 Sol. J. 531, 539.

(*y*) See sub-s. (5).

- |                                      |   |
|--------------------------------------|---|
| Repayment of loans.                  | (iii.) Where made for a nominal consideration for securing the repayment of a loan : sub-s. (6).  |
| Appointments of new trustees.        | (iv.) Appointments and retirements of trustees whether the trust is express or implied : sub-s. (6).  |
| Where no beneficial interest passes. | (v.) Where no beneficial interest passes, <i>e.g.</i> , where an outstanding legal estate is conveyed by a trustee : sub-s. (6).  |
| Winding up of trusts.                | (vi.) Where a trustee conveys property to a beneficiary, <i>e.g.</i> , on the winding up of a trust : sub-s. (6).   |
| Disentailing assurances.             | (vii.) Disentailing assurances not limiting any new estate other than an estate in fee simple in the person barring the entail : sub-s. (6). It is conceived that a disentailing assurance by a father and son limiting the property to such uses as they appoint and, subject thereto, to the existing uses is within the exception. |

The exemptions numbered (iii.)—(vi.) are allowed whether the instrument states the grounds of exemption or not : sub-s. (6).

Where a disposition is made on marriage it should be always stated that marriage is the consideration so as to obtain the benefit of exemption (i.). Also, in cases coming within exemption (ii.), the nature of the body and the purposes of the grant should be stated in the instrument.

Where the disposition comes within the definition of “settlement” in the First Schedule to the Stamp Act, 1891, it is nevertheless to be stamped as a conveyance or transfer : sub-s. (4). In other words, settlements are chargeable with *ad valorem* duty on the value of the property settled.

Formerly the freedom of real estate and chattels real from the 5s. per £100 settlement stamp duty, applicable to personal estate, was regarded as some set-off against rates and other burdens imposed exclusively on real estate.

Now both real and personal estate are placed on the same footing as regards the amount of the stamp.

There is generally no difficulty in arriving at the market value of personal estate ; the expense of ascertaining the value is negligible. But as regards land, the expense of ascertaining

the value will be a serious item to be added to the amount of the stamp.

Sub-s. (2) provides by reference to s. 12 of the Stamp Act, 1891, for the adjudication of stamps chargeable under the Act. Adjudication stamps.

Sub-s. (3) enables voluntary conveyances and settlements to be stamped after execution within the periods mentioned in s. 15 (2) of the Stamp Act, 1891. Stamping after execution.

The effect of the Act will probably be to discourage gifts *inter vivos*. In the case of resettlements by a father and son, instead of barring the estate tail and resettling upon the son attaining full age, the practice will probably be to postpone the resettlement until the son's marriage. Effect of Act on voluntary dispositions.



# FORMS AND PRECEDENTS IN CONVEYANCING, WITH DISSERTATIONS.

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## PRELIMINARY HINTS ON DRAFTING.

BESIDES a knowledge of law there are many details in conveyancing with which a draftsman should be familiar, and which are usually acquired more from actual practice than from books. The following remarks deal with matters of frequent occurrence.

Mistakes are sometimes made in describing the parties to a deed. To avoid this the following list of titles and designations may be found useful:—

|  |                         |
|--|-------------------------|
| For a Duke : The Most Noble John Duke of A.                        |                         |
| For a Duchess : The Most Noble Alice Duchess of A.                 |                         |
| For a Marquis : The Most Honourable Charles Marquis of B.          |                         |
| For a Marchioness : The Most Honourable Mary Marchioness of B.     |                         |
| For an Earl : The Right Honourable Henry Earl of C.                |                         |
| For a Countess : The Right Honourable Lily Countess of C.          |                         |
| For a Viscount : The Right Honourable Arthur Viscount D.           |                         |
| For a Viscountess : The Right Honourable Margaret Viscountess D.   |                         |
| For a Baron : The Right Honourable William Baron E. ; or Lord E.   |                         |
| For a Baroness : The Right Honourable Ann Baroness E. ; or Lady E. |                         |
| For eldest son } The Right Honourable John F., commonly called     | Peers and<br>peeresses. |
| of a Duke } Earl of F. (one of his father's titles).               |                         |
| For younger son } The Honourable Frederick F., commonly called     | Courtesy<br>titles.     |
| of a Duke } Lord Frederick F.                                      |                         |
| For daughter of a } The Honourable Elizabeth F., commonly          |                         |
| Duke } called Lady Elizabeth F.                                    |                         |

Similar courtesy titles are given to the children of a marquis or an earl, the eldest son in each case taking one of the inferior titles of his

father. But the younger son of an earl is not entitled to prefix "Lord" to his name.

Each child of a peer is entitled to the prefix "The Honourable." Formerly it was the practice of conveyancers in these cases to substitute the prefix "The Right Honourable," but this practice is not now so often followed.

In the above cases no address is usually given, though sometimes it is in the case of a younger child of a peer (*a*).

Privy  
councillors.

For a privy councillor, prefix "The Right Honourable" and omit the word "Esquire"; otherwise describe as a commoner.

Baronets and  
knights.

For a Baronet: Sir John A., of &c., in the county of —, Baronet.

For a Knight: Sir Robert B., of &c., in the county of —, Knight,  
or with the initials designating his order (*e.g.*, K.C.B.).

Their wives

The wife of a baronet or knight is entitled to the prefix "Dame," which should be placed before the Christian names.

Commoner's  
name and  
additions.

The name comes first, the Christian names preceding the surname; next the name (if any) of the house or the number of the street; then, if in the country, the name of the parish or township, followed by the name of the county; or if in a city, the name of the city, followed lastly by the description of the party, such as Esquire, M.P.; or, Barrister-at-law, Esquire; or Gentleman; or Grocer or other description. Thus, "John Brown, of Hull, in the parish of Y., in the county of Z., Esquire, D.L."; or "Mary Smith, of 48, High Street, in the city of Xham, Widow (*or* Spinster)." In marriage settlements it is convenient to describe the intended wife as "a daughter of A. B., of &c.," where the parent joins. A married woman is described as "the wife of A. B., of &c.," unless she is living apart from her husband, when her separate address should be given.

Married  
women.

Testators

Where a testator has several addresses it saves trouble when the probate is registered with the different companies, &c., in which he had investments, if all the addresses are given. Where he has changed his address it may also be desirable to refer to this.

Short  
definitions of  
the parties.

The practice is now common in family as well as in commercial conveyancing to define the parties directly after the name and addition is given. Thus, "the vendors," "the purchaser," "the borrower," "the mortgagees," "the lessor," "the tenant," "the trustees," "the earl," or "the present earl," are common definitions.

It is not desirable to use the definitions "the mortgagor" and

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(*a*) For other courtesy titles assumed without strict right, see Elphinstone's Introduction to Conv., 5th ed., 56.

“the mortgagee” or “the lessor” and “the lessee” in the same deed, as it is likely to result in clerical errors.

Again, where recitals refer to a succession of peers it is desirable where they are mentioned again to define them when first named, as well as when they are parties, by numbers according to date of creation or succession, *e.g.*, “hereinafter called the 1st Duke.”

Successive  
peers bearing  
same title.

Repetition may also be avoided by definitions framed to include future owners. Thus, “A. B., of &c. (hereinafter called the lessor, which expression, where the context so admits, includes the person or persons for the time being entitled in reversion immediately expectant upon the term hereby granted).”

Inclusive  
definitions.

Definitions, when used with care, shorten a draft to an appreciable extent, help to avoid the incessant use of the words “the said,” and make the draft easier to read; it is, however, possible to overload a draft with definitions.

As a general rule the conveying parties come first, the persons having the legal estate being preferred to owners of equities. In the case of tenants in common they are described in separate parts, while joint tenants are placed together in one part. The purchasers, lessees, mortgagees, or grantees to uses generally come last. In a release executed on the winding up of a trust the names of a husband and wife entitled under a sub-settlement are generally placed in one part and their trustees follow immediately after in another part.

Position of  
parties.

It must be remembered that if the material facts are not correctly recited the draftsman has but an indifferent chance of getting the operative parts right. Far too little attention is paid to recitals, and beginners fail for want of studying Davidson's volume containing the common form recitals. These forms are somewhat longer than those in modern use, but they show in each case what should be referred to. Some nervous practitioners avoid the difficulty in deciding what is material by reciting almost everything *verbatim*, merely changing the tense or mood. This may be safe, and may, moreover, be necessary

Recitals.

in pleadings or where a question of construction arises, but more often than not it results in obscurity.

Deeds made  
supplemental.

Besides having to consider whether the facts are material the draftsman must consider who will have the custody of the document he is reciting. If his client will obtain it, there will not, as a rule, be any need to recite it at length; in many cases the deed which is being prepared may be made supplemental to the document in recital (*b*). Where it is made supplemental then it will be sufficient to describe very shortly the nature of the principal deed, *e.g.*, “being a mortgage of the fee simple of the — estates in the counties of — to A. B. for securing £—— and interest,” or “whereby A. B. did so and so.” There is no need for the recital of the principal deed to come first.

Different ways  
of reciting  
the same  
document.

Another result of the rule that the material parts of a document should be brought out in the recital is that the same document will be recited in different ways according to the nature of the document which contains the recital. The best example is that of the recital of a mortgage. Thus, in a transfer the recital should show to whom the property was conveyed and who advanced or is entitled to the mortgage debt; unless the mortgagor concurs there is no need to show who conveyed the property, for the title to the equity of redemption is not material. Again, in a conveyance by a mortgagee under his power of sale, it must be shown to whom the property was conveyed and that the day is passed on which the power of sale arose (*c*). If the mortgagee is selling under an express power in a mortgage deed, the material parts of the power must be recited. If the mortgagor and mortgagee join in selling, the recital of the mortgage should show that the mortgagor, being then entitled in fee, conveyed the property to the mortgagee in fee by way of mortgage for securing the principal and interest. Further,

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(*b*) Conv. Act, 1881, s. 53. This section only applies to deeds, but a document may be made supplemental to a will or other document.

(*c*) Conv. Act, 1881, ss. 19–22; also Lord Cranworth’s Act, 1860 (23 & 24 Vict., c. 145), s. 15.

in a reconveyance the recital should show who conveyed the property and the effect of the proviso for redemption besides the position of the mortgagee.

A beginner too often thinks that he has only to find a form for the recital of the document and then to copy it, regardless of the nature of the document in which the recital is placed.

The general rule is to follow the chronological order in stating the facts. This, however, is a rule which, at any rate in lengthy documents, is subject to the important exception that matters relating to each separate transaction should be grouped together in order to make the story intelligible. The object of the draftsman in framing his recitals must be to present the facts in as readable a form as is consistent with accuracy; the reader ought to be able to gather the material facts by a simple perusal of the recitals. It ought not to be necessary for him to make an epitome before he can puzzle out the facts. If this is necessary, then it shows that the recitals are no better, and may be worse, than a complicated abstract.

The order  
of recitals.

Much simplification can be effected in complicated cases by placing in schedules or different parts of one or more schedules statements of documents and facts. These are grouped according to the subject-matter. The recitals refer to the contents of each schedule or each part of a schedule, and state shortly the result arrived at in each schedule or part.

Scheduling  
documents  
and facts.

Schedules can be safely used, *e.g.*, to insert a full description of the property or of leases conveyed, or of leases subject to which the property is conveyed, or of documents in respect of which an acknowledgment of the right to production is given. Where schedules are used in aid of recitals they may frequently be of service also in connexion with an acknowledgment of the right to production.

The ordinary  
use of  
schedules.

A full recital generally commences thus: "Whereas by &c. something was done"; but in recitals of effect the usual commencement is: "Whereas under &c. and by reason of &c. something is the case." A beginner may feel confident in

Full recitals  
and recitals  
of effect.

reciting a single instrument, but without practice he may easily make mistakes in an attempt to recite together the effect of several documents and facts.

At what point  
recitals should  
commence.

Freeholds.

Where the abstract of title to freeholds shows that a vendor is an owner in fee simple in possession free from incumbrances, no part of the abstract should be recited, but the recital will be merely one of the vendor's seisin and of his agreement to sell. If a lease affects the property it will be referred to in the habendum, and if there are several they may be set out in a schedule.

Copyholds.

Where an abstract of title to copyholds shows that the vendor is entitled to a customary estate in fee simple in possession free from incumbrances, it is sufficient to recite his admission, or the surrender, devise, bargain and sale, followed in every case by his admission.

Leaseholds.

Where an abstract of title to leaseholds shows that the vendor is absolutely entitled free from incumbrances, the lease must first be recited, and then the title will be taken up at the last assignment or disposition. The form generally runs thus: "And whereas after divers mesne assignments and acts in the law ultimately under an Indenture dated &c. the Vendor became and is now absolutely entitled to the premises demised by the recited Lease for the residue of the term thereby granted."

In reciting the title to leaseholds a recital of the lease should in all cases come first, the description of the property should be set out in the recital, and in the operative part the parcels should, contrary to the general rule, be framed by reference to the recited lease, *e.g.*: "All the premises comprised in and demised by the recited lease."

Incumbrances.

Recitals to  
be carried  
through from  
commence-  
ment.

Where the abstract discloses an existing incumbrance, the recitals must be taken up at a point not later than the incumbrance. From the point that the recitals commence they must state all the dealings, including discharged incumbrances, up to the date of the document in which the recitals are placed.

Mortgages by  
deposit.

There are some exceptions to this rule—thus, as above

explained, an *hiatus* is allowed in reciting the title to leaseholds; again, no references are made to a memorandum of a mortgage by deposit unless absolutely necessary. Such mortgages are intended to drop off the title as soon as they are paid off and a receipt indorsed on the memoranda.

Where a married woman is a party to a deed and in a recited deed her maiden name appears, when reciting the parties of that deed she should be referred to by her married name, thus: "the said Jane Smith (then Jane Brown spinster)"; the rule is that in the case of parties the name first appearing should be used throughout the draft, notice merely being taken of the former name.

Changes  
of name.

When the person is first mentioned in a recital the old rule was to refer to him or her by the name borne at the date of the deed which is recited, referring later, if necessary, to changes of name when they occurred. However, it is now more usual when the name first occurs in a recital to refer to the subsequent change of name, thus: "Jane Smith (afterwards and hereinafter called Jane Brown)," and then, of course, to refer to the subsequent name in later recitals.

Sub-recitals (*d*) must be avoided by re-stating the fact, which is mentioned in the document about to be recited, before that document is recited. In a few cases a sub-recital may be useful and harmless; it should then be introduced thus: "after recitals whereby it appeared that &c."

Sub-recitals  
not to be used

The recitals relating to the intention of the parties are generally placed immediately before the operative parts; where incumbrancers join in a conveyance the recitals of the state of the mortgage debts and of their agreeing to concur should be placed after the general recital of the agreement to sell.

Recitals of  
intention.

As a rule the date of the contract for sale should not be mentioned in the recital (*e*); after the conveyance the contract

Of the con-  
tract for sale

(*d*) There is a doubt whether a sub-recital is a statement of a fact within V. & P. Act, 1874, s. 2 (2).

(*e*) As to contracts for leases under powers, see Conv. Act, 1881, s. 4.

Finance  
(1909-10)  
Act, 1910.

will fall off the title. But where the contract was made before the commencement of the Finance Act, 1910 (29th April, 1910), and completion takes place after, then the date of the contract should appear to show that no increment value duty is payable.

Sales under  
Settled Land  
Acts.

The material facts to be shown on a sale under the Settled Land Acts are that the vendor is a tenant for life in possession of the land or has the powers of one, and that the trustees named in the conveyance are trustees of the settlement, or compound settlement, for the purposes of the Acts.

Purchase with  
capital money.

When land purchased has to be conveyed to the uses of a settlement, the recital immediately preceding the agreement for sale will be that of the settlement to the uses of which the land is to be conveyed.

Purchase of  
land by  
trustees of a  
money settle-  
ment under  
a power.

Where trustees purchase land under a power in a personality settlement it is no longer the practice to recite the settlement and disclose the power, but the land is conveyed to them on trust for sale and the net proceeds are directed to be held on the trusts of the settlement. This keeps the trusts off the title.

Rule as to  
keeping trusts  
off the title  
on a purchase  
or mortgage.

Thus, the first part of the old rule, that where trustees purchase land they disclose the trusts, and where they lend money on mortgage the trusts are kept off, is subject to the above exception.

Mortgage or  
transfer of a  
mortgage in  
consideration  
of marriage.

Even where a settlor on his marriage transfers a mortgage to his trustees, the trusts should not be disclosed. The practice is to recite the intended marriage and the agreement to transfer. The mortgage debt is transferred to the trustees absolutely, and in the habendum they are directed to hold the debt on the trusts declared concerning the same by the personality settlement of even date. The transfer contains a power to appoint trustees corresponding to that in the settlement. When new trustees are appointed of the settlement, a separate deed is used to transfer the mortgage and appoint trustees of the original transfer from that appointing trustees of the settlement. This keeps the trusts off the title. The same scheme is applied where the settlor on his marriage creates a new mortgage in favour of his trustees.

Where trustees invest money on mortgage, they do so merely

as owners on a joint account, and the settlement is in no way disclosed.

Investments on mortgages after the date of the settlement.

There are two classes of settlements of land to be distinguished. The first is a strict or realty settlement, where the land is limited either at law or in equity by way of succession, and trustees are either appointed for the purposes of the Settled Land Acts or are given a power of sale, which makes them trustees for the purposes of the Acts. In all these settlements the proper person to make title is the tenant for life, legal or equitable, or the persons having the powers of a tenant for life. The trustees merely join in the conveyance to give a receipt for the money.

Strict settlements and settlements by way of trust for sale.

In the case of an infant the trustees act on his behalf; and where there is a discretionary trust for the benefit of two or more persons so that there is no tenant for life, it is usual to find that the settlement gives to the trustees the statutory powers.

A settlement containing a future trust or power of sale comes within the first class (*f*).

The second class consists of settlements by way of immediate trust for sale, with or without a power to postpone the sale. These come within S. L. Act, 1882, s. 63, and S. L. Act, 1884, s. 7, and, unless an order of the Court has been obtained under the last-mentioned section, the proper persons to make title are the trustees holding the land on trust for sale.

Persons holding land on trust for sale.

This class of settlement is the one which most frequently occurs. Thus, where there is a money settlement, and land is to be held on the same trusts, the land must be conveyed by a separate deed on trust for sale and the trusts declared of the net proceeds of sale by the money settlement. Another common case is where a testator disposes of a mixed residue of real and personal property on usual trusts for sale and conversion. The settlor or testator may not desire the land to be sold, and, in virtue of the power to postpone, it may never, in fact, be sold; the object, however, of the draftsman is to secure that the

The respective objects of a trust for sale and a trust investment land.

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(*f*) S. L. Act, 1890, s. 16.

land shall devolve on trusts which are applicable to personal property but are ill-framed when applied to land. Again, when personalty is to devolve in the same way as land settled as realty by deed or will, the only safe way to do this is to impress the personalty with a trust for investment in land to be conveyed to the uses of the settlement. No mistake is more common at the present time than that of inserting a trust for money to devolve with land, or for land to devolve with money, without the intervention of the appropriate trust for conversion. It must be remembered that the feudal rule as to the vesting of contingent remainders (*g*) does not apply to personal property, and that an attempt to create an estate tail in money confers an absolute interest at birth.

Operative  
parts.

The question as to the forms the operative parts are to take cannot usefully be discussed here. The beginner cannot do better than take a book of precedents and study them. In the course of his work he will sometimes be unable to find a form to meet the case with which he has to deal. The reason may be that his instructions merely indicate the result which is desired, and the draftsman may not know what common forms ought to be used. Or it may be that he will have to vary a common form or settle a new form. In the latter case he should base his draft on his general knowledge of the common forms and the law applicable to the case. The advantage of keeping in touch with (not slavishly copying) the common forms in such cases is obvious. The common forms have come before the courts on many occasions, and their effect is well known; full advantage of this ought to be taken. Again, the beginner should remember the rule, “If you get long you may know you are wrong,” qualified by another rule, “There are worse mistakes than a little length.” Time was when no very serious attempt was made to produce

The prepara-  
tion of new  
clauses.

Concise draft

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(*g*) See article on “Contingent Future Interests” in L. Q. R., 1905, 118 and subsequent numbers.

concise drafts. The effect of the old practice may even be discerned from time to time in modern drafts. The temptation to run to length is not, however, so great to a beginner as to those who rejoiced in the old practice. However praiseworthy an attempt may be to obtain a concise and readable draft, it does not free the draftsman from blame if for the sake of brevity he omits any power or clause properly required for carrying out the trust or transaction. In particular the tendency to give way to the desire of a testator to have a will that can be written on a sheet of notepaper, though it settles valuable property or attempts to effect some other complicated arrangement, is most harmful. A will frequently gives work to the draftsman which is more difficult than the preparation of a Bill for Parliament, but the testator does not know enough to realise this. Rather than omit or shorten material forms it is better to give the property to trustees and direct them to settle or deal with it in accordance with scheduled instructions.

Short wills,  
danger of.

Many draftsmen fail in style, not because they consider it useless, but because they have been accustomed to use a precedent or form taken from any collection which may be at hand. The only way for a beginner to acquire a fixed style is to select one collection of precedents and mould his style on them; when he uses a form from another collection he should remodel it to make it consistent with his draft.

Style.

Often more difficult than the preparation of a draft is the approval of one submitted on behalf of a party for whom the original draftsman was not acting. The rule then is that no alterations should be made except those necessary to correct clerical errors, to protect your own client, and to make the draft work. It is not your business to give the other side a lesson in conveyancing; indeed, an attempt to do so might injure the original draftsman. Where it is considered that a draft is fundamentally wrong, it may be advisable to return it untouched, with an opinion or letter asking for an explanation

Correction and  
approval of  
drafts.

and for a new draft to be submitted. It should be borne in mind that if the draft carries out the intention of the parties it should not be touched at all. There is no need to make an alteration to show that the draft has been perused ; the signature at the foot will show that. To pass a draft without an alteration is no sign of weakness—in fact, rather the reverse.

Draft submitted by solicitor client to counsel.

Where the draft is submitted by the client this is merely part of the instructions, and counsel will either adopt and settle it or prepare a new draft as he thinks fit ; his duty is to do the best he can for his lay client. There is or should be no question of feelings on the part of the solicitor. The draft may be quite good, but counsel may know of a better scheme for carrying out the instructions ; in any case it will probably take him less time to use his own forms. In theory all drafts, except Parliamentary Bills, are drawn by the instructing solicitor before being settled by counsel, but in practice it is generally more convenient for counsel to prepare and settle the draft.

Scheme for drafts.

Before the draftsman commences to prepare a draft he should thoroughly digest his facts and make up his mind as to the proper way to carry out his instructions, otherwise much time and paper will be wasted.

# A.—DISSERTATION ON THE LAW AND PRACTICE RELATING TO SALES.

## CHAPTER I.

### CONTRACTS FOR SALE (*a*).

SECT. I.—*The essentials of a valid contract for sale of land, having regard to sect. 4. of the Statute of Frauds.*

By s. 4 of the Statute of Frauds, it is enacted that “no action shall be brought whereby to charge any person upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised” (*b*). And this applies to a leasehold as well as to a freehold interest, including a contract for the sale of a lease for less than three years, although the lease itself may, under s. 2 of the statute, be by parol (*c*).

29 Car. 2, c. 3.  
Agreement must be in writing, signed by the party to be charged or his agent.

To satisfy the statute there must be a writing signed by the party to be charged, or by some person lawfully authorised by him, which writing must either itself express all the terms of the contract, or refer to some existing document which, when read in conjunction with it, does so.

If several writings, one must be signed.

Where it is sought to prove an agreement from several documents, parol evidence is admissible to connect them, and for this purpose it is not necessary for the one document to describe,

Parol evidence admissible to connect several documents.

(*a*) For a fuller statement of the law of vendors and purchasers of land the reader is referred to Dart, 7th ed.

(*b*) See Dart, 7th ed., 210, 218.

(*c*) *Barrett v. Rolph* (1845), 14 M. & W. 348; 14 L. J. Ex. 308.

or contain an express reference to the other; it is sufficient if the Court is satisfied that such a reference is intended. Thus, if A. by letter offers to sell land to B. on the terms therein specified, and B. by letter says "I accept your offer," parol evidence may be given to show that the offer alluded to by B. is that contained in A.'s letter (*d*). Again, where the signed document referred to "instructions," it was shown by parol evidence that instructions had been given in writing, and that these were the instructions referred to (*e*). And where B. signed an agreement to purchase land at H. from A., and A. signed a receipt expressed to be "for a deposit on the purchase of the land at H.," it was held that the receipt referred to the agreement, and constituted a contract binding on A. (*f*). Again, where A. signed a memorandum containing all the essential parts of a contract, except the description of the property, and afterwards wrote to B. acknowledging the receipt of a deposit "on account of the purchase-money of the F. estate," it was held that the two documents might be read together (*g*). And where a letter was enclosed in an envelope, it was held that the envelope might be used to supply the name of one of the parties (*h*).

Essential parts  
of a contract.

The essential parts of a contract are: the names, or a sufficient description, of the vendor and purchaser; the amount and nature of the consideration to be paid on one side and received on the other; and a sufficient description of the property sold.

What is a  
sufficient  
designation of  
vendor or  
purchaser or  
property.

It is not necessary that the vendor should be actually named in the written contract, if he is sufficiently described to admit of his being identified by extrinsic evidence, and the same rule

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(*d*) *Per* Bramwell, L.J., in *Long v. Millar* (1879), 4 C. P. D. 450, 454; 48 L. J. Q. B. 596, 599. See also *Sheers v. Thimbleby* (1897), 76 L. T. 709.

(*e*) *Ridgway v. Wharton* (1857), 6 H. L. C. 238; 27 L. J. Ch. 46.

(*f*) *Long v. Millar*, *sup.*

(*g*) *Oliver v. Hunting* (1890), 44 Ch. D. 205; 59 L. J. Ch. 255; *Studds v. Watson* (1884), 28 Ch. D. 305; 54 L. J. Ch. 626.

(*h*) *Pearce v. Gardner*, 1897, 1 Q. B. 688; 66 L. J. Q. B. 457; *Freeman v. F.* (1891), 7 T. L. R. 431.

applies to the description of the purchaser or the property sold (*i*). The term "vendor" or "vendor's solicitor" is not a sufficient description (*k*); but it may be sufficient to describe the vendor as "the proprietor" (*l*), or "the trustee for sale" (*m*), or "the person who paid the £50" (*n*), and the property as "the property purchased for £420, at the Sun Inn, Pinxton, on the above date" (*o*), or "twenty-four acres of freehold land at T." (*p*). A letter from the vendor naming the purchaser and demanding payment from him of the balance of "the purchase" was held to be a sufficient indication of the purchaser so as to bind the vendor (*q*).

If the vendor is not sufficiently described, the contract is not rendered valid by the fact that the purchaser knew who the vendor was (*r*).

Objection not removed by purchaser's knowledge.

It is sufficient if the offer or contract for purchase states the names of the contracting parties, though one may be only the agent of an undisclosed principal (*s*).

Agent of undisclosed principal.

The usual place for the signature of a contract is at the end, but the position is not essential, provided that it is so placed as to govern the whole instrument (*t*). Thus, if a person draws up an agreement in his own handwriting beginning "I, A. B., agree," this is sufficient (*u*). And where an agreement, in the form of a letter from A. addressed to B., whose name appeared at the

What is a sufficient signing.

(*i*) See Dart, 7th ed., 234, 235.

(*k*) *Potter v. Duffield* (1874), 18 Eq. 4; 43 L. J. Ch. 472; *Jarrett v. Hunter* (1887), 34 Ch. D. 182; 56 L. J. Ch. 141; *Coombs v. Wilkes*, 1891, 3 Ch. 77; 61 L. J. Ch. 42.

(*l*) *Rossiter v. Miller* (1878), 3 A. C. 1124, 1142; 48 L. J. Ch. 10.

(*m*) *Catling v. King* (1877), 5 Ch. D. 660; 46 L. J. Ch. 384.

(*n*) *Carr v. Lynch*, 1900, 1 Ch. 613; 69 L. J. Ch. 345.

(*o*) *Shardlow v. Cotterell* (1882), 20 Ch. D. 90; 51 L. J. Ch. 353.

(*p*) *Plant v. Bourne*, 1897, 2 Ch. 281; 66 L. J. Ch. 643.

(*q*) *Studds v. Watson* (1884), 28 Ch. D. 305; 54 L. J. Ch. 626.

(*r*) *Jarrett v. Hunter*, *sup.* (*k*).

(*s*) *Filby v. Hounsell*, 1896, 2 Ch. 737; 65 L. J. Ch. 852.

(*t*) *Caton v. C.* (1867), L. R. 2 H. L. 127; 36 L. J. Ch. 886; Dart, 7th ed., 256.

(*u*) *Saunderson v. Jackson* (1800), 2 Bos. & P. 238; *Bleakley v. Smith* (1840), 11 Sim. 150.

beginning of the letter, was written by B.'s agent with his authority and presented to A. for signature and signed by him, it was held that B.'s name inserted by his agent was a signature binding on him within the statute (*x*). But an agreement in the usual form containing the names of the parties, and ending with "As witness our hands," without being followed by any name or signature, is not signed so as to satisfy the statute, though in the handwriting of the solicitor or agent of the party sought to be charged (*y*). So the alteration of a draft conveyance will not take the case out of the statute (*z*), nor the approval of a draft conveyance by the solicitor of one of the parties (*a*).

Agent may be appointed by parol.

An agent for the sale or purchase of land may be appointed by parol, and his authority may be revoked at any time before the agreement is signed (*b*).

Auctioneer agent for both parties.

A sale by auction is within the statute, so that there is no binding contract until the memorandum, which is usually written at the foot of the conditions of sale, is signed by the parties or their agent. But a vendor by appointing an auctioneer impliedly authorises him to sign the memorandum as his agent, and a similar authority is given by the purchaser by the act of bidding (*c*).

Auctioneer's clerk, solicitor, or estate agent has no implied authority to sign contract.

Such implied authority does not extend to the auctioneer's clerk (*d*). A solicitor has no implied authority to sign a contract for sale on behalf of his client (*e*). Estate agents as such have no

(*x*) *Evans v. Hoare*, 1892, 1 Q. B. 593; 61 L. J. Q. B. 470. See *Hucklesby v. Hook*, 1900, W. N. 45 (report inaccurate); 82 L. T. 117.

(*y*) *Hubert v. Trcherne or Turner* (1842), 3 Man. & G. 743; 11 L. J. C. P. 78. See also *R. v. Tart*, 5 Jur. N. S. 679.

(*z*) *Harkins v. Holmes* (1721), 1 P. Wms. 769.

(*a*) See Dart, 7th ed., 258, 259.

(*b*) See Dart, 7th ed., 210, 211; and see *Fonge v. Toyubee*, 1910, 1 K. B. 215; 79 L. J. K. B. 208.

(*c*) *Sims v. Landray*, 1894, 2 Ch. 318; 63 L. J. Ch. 535; Dart, 7th ed., 208.

(*d*) *Bell v. Balls*, 1897, 1 Ch. 663; 66 L. J. Ch. 397; but, as in *Sims v. Landray*, *sup.*, the clerk may show express authority from the purchaser. See also Dart, 7th ed., 208.

(*e*) *Smith v. Webster* (1876), 3 Ch. D. 49; 45 L. J. Ch. 528. See *Griffiths Cycle Corporation v. Humber & Co.*, 1899, 2 Q. B. 414; 68 L. J. Q. B. 959.

general authority to enter into contracts for their employers (*f*). They must have direct instructions (*g*).

Contracts for sale are frequently made by letters. If A. by letter offers to sell land to B., and B. by letter accepts the offer, the contract is complete from the time when B.'s letter is posted, and it makes no difference if the letter is lost or delayed in transmission (*h*).

Contracts by letters complete when acceptance posted.

An offer may be withdrawn or amended, so long as it remains unaccepted, and this is so, though the person making the offer promises to keep it open for a specified time, such promise being void as a *nudum pactum*.

Offer may be withdrawn—promise to keep it open void.

The withdrawal of an offer is not effective until it has been brought to the knowledge of the person to whom the offer was made; and an acceptance posted before the withdrawal is received is complete, though the letter of withdrawal may have been actually posted before the letter of acceptance (*i*). A sale of the property to a third party is equivalent to a withdrawal, but it must be made known to the party to whom the offer was made before he accepts it (*k*).

Withdrawal not effective until known to other party.

Sale to a third party equivalent to withdrawal.

The answer to the written offer must be a simple acceptance of the terms proposed, without the introduction of any new or different term (*l*); if the proposal is once refused, it cannot afterwards be revived by tendering a simple acceptance of it (*m*).

Answer must be a simple acceptance.

An offer in writing containing all necessary particulars may be accepted by parol (*n*).

Acceptance by parol.

(*f*) *Thuman v. Best* (1907), 97 L. T. 239.

(*g*) *Rosenbaum v. Belson*, 1900, 2 Ch. 267; 69 L. J. Ch. 569.

(*h*) *Dunlop v. Higgins* (1846), 1 H. L. C. 381; *Re London and Northern Bank*, 1900, 1 Ch. 220; 69 L. J. Ch. 24.

(*i*) *Henthorn v. Fraser*, 1892, 2 Ch. 27; 61 L. J. Ch. 373; Dart, 7th ed., 237, 238.

(*k*) *Dickinson v. Dodds* (1876), 2 Ch. D. 463; 45 L. J. Ch. 777; as explained in *Henthorn v. Fraser*, *sup.* (*i*).

(*l*) *Holland v. Eyre* (1825), 2 Sim. & St. 194.

(*m*) *Hyde v. Wrench* (1840), 3 Beav. 334; *Stevenson v. McLean* (1880), 5 Q. B. D. 346, 350; 49 L. J. Q. B. 701.

(*n*) *Filby v. Hounsell*, 1896, 2 Ch. 737; 65 L. J. Ch. 852.

When reference to a formal contract amounts to a condition.

If an offer containing all the necessary terms is accepted unconditionally, there may be a binding agreement, even though the parties contemplate that a more formal document shall be drawn up and signed (*o*). But if the acceptance is conditional upon and "subject to" a formal contract, this means that the acceptor reserves the right to make stipulations as to minor points—*e.g.*, title—and there is only a treaty (*p*).

Acceptance subject to approval of title.

Where an offer of sale is accepted, "subject to the title being approved by my solicitor," such acceptance is not conditional, but merely means that the title shall be investigated in the usual manner, subject to the vendor's right to submit any objections to the decision of the Court (*q*).

Effect of subsequent correspondence.

Although letters standing alone might be sufficient evidence of a contract (*qq*), a subsequent correspondence continuing the negotiation on an important point might show that the contract was not complete (*r*).

Notice to treat.

The effect of a notice by a railway company to treat with a landowner for the purchase of land, is dealt with later.

*What is an interest in or concerning land within the meaning of the statute (s).*

What interest in land within the statute.

An agreement to sell a right to go over land and kill and take away game is within the statute (*t*), but an agreement to sell

(*o*) *Rossiter v. Miller* (1878), 3 A. C. 1124; 48 L. J. Ch. 10; *Filby v. Hounsell*, 1896, 2 Ch. 737; 65 L. J. Ch. 852.

(*p*) *Rossiter v. Miller, sup.*; *Jones v. Daniel*, 1894, 2 Ch. 332; 63 L. J. Ch. 562; *Cook v. Williams* (1897), 14 T. L. R. 31; *Bromet v. Neville* (1909), 53 Sol. J. 321; and see *Santa Fé Co. v. Forestal, &c. Co.* (1910), 26 T. L. R. 534.

(*q*) *Hussey v. Horne Payne* (1879), 4 A. C. 311; 48 L. J. Ch. 846; *Chipperfield v. Carter* (1895), 72 L. T. 487; Dart, 7th ed., 253.

(*qq*) See *Bristol Tramways, &c. v. Fiat Motors*, 1910, 2 K. B. at p. 838.

(*r*) *Hussey v. Horne Payne, sup.*; *Bristol, &c. Breal Company v. Maggs* (1890), 44 Ch. D. 616; 59 L. J. Ch. 472; *Bellamy v. Debenham*, 1891, 1 Ch. 412; 60 L. J. Ch. 166. See also *Lever v. Koffler*, 1901, 1 Ch. 543; 70 L. J. Ch. 395.

(*s*) See Dart, 7th ed., 218 *et seq.*

(*t*) *Webber v. Lee* (1882), 9 Q. B. D. 315; 51 L. J. Q. B. 485; but *semble* if a right to shoot over land is merely a personal licence of pleasure, and not

tenant's fixtures (*u*), or shares in a mining company worked on the cost-book principle (*x*), or shares in a railway company, is not (*y*).

With regard to timber and growing crops, the rule is, that whatever property of this kind would upon the death of an owner of land go to his executors as emblements is not within the statute. Upon this principle it has been decided (*z*) that the statute does not apply to an agreement for the sale of growing crops of potatoes (*a*), wheat, or barley (*b*), these being produced by the labour and industry of the cultivator, and it is immaterial whether the crops are to be gathered by the vendor or the purchaser. But standing timber, fruit on a tree, growing grass (*c*), and the like, are considered natural growths and part of the land, until severed from it. If, then, timber or a crop of fruit or grass is sold while growing, and it is intended that it shall remain on the land and derive further nutriment and benefit therefrom, and be eventually cut or gathered by the purchaser, part of the subject-matter of the contract is an interest in land, and the case is within the statute. If, however, the thing sold is to be delivered by the vendor, and the purchaser has no interest in it until severed, or if it is to be removed, whether by the buyer or seller, at once or so soon afterwards that any further benefit to it from its remaining on the land does not appear to be

As to timber and growing crops.

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of profit, the statute does not apply (S. C.); and see *Wickham v. Hawker* (1840), 7 M. & W. 63; 10 L. J. Ex. 153.

(*u*) *Lee v. Gaskell* (1876), 1 Q. B. D. 700; 45 L. J. Q. B. 540. See also *Thomas v. Jennings* (1896), 75 L. T. 274.

(*x*) *Powell v. Jessop* (1856), 18 C. B. 336; 25 L. J. C. P. 199.

(*y*) *Duncuft v. Albrecht* (1841), 12 Sim. 189.

(*z*) See generally on this subject, Dart, 7th ed., 226 *et seq.*

(*a*) *Evans v. Roberts* (1826), 5 B. & C. 829; 4 L. J. (O. S.) K. B. 313.

(*b*) *Jones v. Flint* (1839), 10 Ad. & Ell. 753; 9 L. J. Q. B. 252.

(*c*) *Crosby v. Wadsworth* (1805), 6 East, 602. Although the above-mentioned things cannot in strictness be said to be produced spontaneously, yet the expense and labour, employed in their original planting or sowing, bears so small a proportion to their natural growth that they are not considered *fructus industriales*.

intended, then the sale is of a mere chattel, and not within s. 4 (*d*).

Agreement comprising land and personal chattels.

An agreement for the sale of land and personal chattels, which is void as to the land as not complying with the statute, is void also as regards the chattels, unless the agreement forms two distinct contracts (*c*).

*The effect of part performance to take a case out of the statute.*

What is part performance.

It is a settled rule of the Court to decree specific performance of a verbal agreement to sell or lease land, notwithstanding the statute, where there has been what is called part performance, *i.e.*, some act resulting from the agreement and unequivocally referable to it, which so changes the position of the parties that one of them would suffer detriment if the agreement were not carried out (*f*).

Delivery of possession,

The common instance of an act of part performance is delivery of possession. The acknowledged possession by a stranger of the land is not explicable except on the supposition, and is therefore evidence, of some agreement, and the Court considers itself at liberty, without infringing the statute, to inquire what the terms of that agreement are (*g*). If at the time of the contract for sale the purchaser was already in possession as tenant, the Court cannot interfere, because in that case the possession is explicable without supposing any agreement; but if in the case of an existing lease the lessor verbally agrees to renew at a

or change of tenure, is sufficient.

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(*d*) *Marshall v. Green* (1875), 1 C. P. D. 35; 45 L. J. C. P. 153 (standing timber). See observations on this case in *Lavry v. Pursell* (1888), 39 Ch. D. 508; 57 L. J. Ch. 570 (building materials of standing house); Dart, 7th ed., 227.

(*e*) Dart, 7th ed., 229, and cases there cited.

(*f*) *Maddison v. Alderson* (1883), 8 A. C. 467; 52 L. J. Q. B. 737; *Dickinson v. Barrow*, 1904, 2 Ch. 339; 73 L. J. Ch. 701.

(*g*) *Morphett v. Jones* (1818), 1 Sw. 172. It will be borne in mind that the 4th section of the statute does not make a parol contract void, but only provides that no action shall be brought to charge a person upon it. When there has been an overt act afterwards, such as delivery of possession, the equity arises out of this overt act, and not out of the parol agreement taken by itself.

higher rent, and the higher rent is actually paid, such payment indicating a change of tenure has been held equivalent to a change of possession (*h*).

The payment of part of the purchase-money, or even (according to the balance of judicial authority) of the whole of it, is not an act of part performance such as will take a case out of the statute. Payment of money is an equivocal act, and not (in itself) indicative of any contract affecting land (*i*).

Payment of part of the purchase-money not sufficient.

So, acts merely auxiliary to a contract, and which do not change the position of the parties, *e.g.*, the delivery of an abstract, the measuring of the land, are not part performance within the meaning of the rule (*k*).

Acts not changing the position of the parties insufficient.

Whether expenditure of money without change of possession takes a case out of the statute, as where a landlord agrees to sell to a tenant in possession, or to grant him a new lease, and the tenant, on the faith of the agreement, spends money in building, will depend upon the circumstances attending such expenditure (*l*). Such expenditure is not part performance where it is consistent with the present position of the parties, and does not necessarily indicate any change in that position (*m*).

Whether expenditure of money in improvements sufficient, query.

The doctrine of part performance rests on the principle that equity will not permit the statute to be an instrument of fraud, and that it would be unjust to allow a man who has taken advantage of a contract to refuse to perform his part of it. This must be taken to mean not that a Court of equity can, on the ground of a supposed fraud or injustice, overrule the express terms of an Act of Parliament, but that, whenever there are circumstances which enable the Court to enforce the contract,

Principle on which doctrine rests.

(*h*) *Miller v. Sharp*, 1899, 1 Ch. 622; 68 L. J. Ch. 322.

(*i*) See *Humphreys v. Green* (1882), 10 Q. B. D. 148; 52 L. J. Q. B. 140; *Miller v. Sharp*, *sup.*

(*k*) Dart, 7th ed., 1038, 1039.

(*l*) *Sutherland v. Briggs* (1841), 1 Ha., 26; 11 L. J. Ch. 36; *Williams v. Evans* (1875), 19 Eq. 547; 44 L. J. Ch. 319; and see *Lester v. Fawcraff* (1700), Colles' P. C. 108; 2 Wh. & T., 7th ed., 460.

(*m*) *Frame v. Dawson* (1809), 14 Ves. 386.

without infringing the statute, it avails itself of those circumstances in order to prevent the fraud or injustice above referred to (*n*).

Contracts by  
limited  
owners.

A verbal agreement by a tenant for life to grant a lease in exercise of a power in the settlement, followed by delivery of possession and expenditure by the intended lessee, cannot be enforced against the remainderman unless it can be shown that such expenditure was permitted by the latter with knowledge that the agreement was only a verbal one (*o*). But query whether this rule applies to an agreement not in writing entered into by a tenant for life under the powers conferred by the S. L. Acts (*p*).

SECT. II.—*The essentials of a valid contract for sale, as regards the capacity of the contracting parties.*

*Primâ facie*  
competency of  
all persons  
(including  
aliens) to sell  
or purchase.

*Primâ facie*, all persons, whether natural-born subjects or aliens (*q*), are competent to sell or purchase land or other property. The cases of incapacity to do so are exceptions to the general rule, and may arise either from a general personal incapacity to enter into a contract, as in the case of married women under the old law, infants, and lunatics, or from some statutory disability, *e.g.*, the Statutes of Mortmain as affecting corporations, or from some relation in which the proposed vendor and purchaser stand to each other.

*Married Women.*

Contracts for  
sale by married  
women.

A woman married since 1882 has power to dispose of her own property, and therefore to enter into valid contracts for sale, as if she were a *feme sole*, and a woman married before 1883 has a

(*n*) See *Maddison v. Alderson* (1883), 8 A. C. 467; 52 L. J. Q. B. 737.

(*o*) *Blore v. Sutton* (1817), 3 Mer. 237. See also *Trotman v. Flesher* (1861), 3 Giff. 1; *Landed Estates Co. v. Wooding* (1869), 21 L. T. 384; Dart, 7th ed., 1043; but *cf.* *Shannon v. Bradstreet* (1803), 1 Sch. & Lef. 52.

(*p*) S. L. Act, 1882, ss. 12, 31 (1) (iii.), (2). He may grant a lease for three years not under seal: S. L. Act, 1890, s. 7 (iii.).

(*q*) Naturalisation Act, 1870.

like power as regards property acquired by her after 1882 (*r*). A woman, whenever married, may dispose of property held for her separate use, unless restrained from anticipating (*s*). She may also dispose of property over which she has a general power of appointment; and a contract for sale will be deemed in equity a defective appointment, and will be aided accordingly (*t*).

In cases not coming within the preceding paragraph, a married woman is incapable of disposing of real estate, except with the concurrence of her husband, and by deed acknowledged pursuant to the Fines and Recoveries Act, 1833 (*u*).

If a married woman, whatever may be the date of her marriage, enters into a contract to purchase land or other property, the contract may be enforced against her to the extent of any separate property belonging to her at the time or acquired afterwards (*x*).

Contracts for purchase by married woman.

### *Infants.*

An infant under the age of twenty-one years cannot execute a valid conveyance of land, except by the custom of gavelkind (*y*), nor can he enter into a binding contract for the sale or purchase of land (*z*). Such a contract is voidable by the infant, and on his attaining his majority he may either avoid or affirm it as he thinks proper; and if he dies under age, his representatives have the like privilege (*a*). If an infant elects to repudiate a voidable contract, he must do so within a reasonable time after coming of age (*b*).

Contract by infant for sale or purchase of land voidable.

(*r*) See Dissertation on Husband and Wife in Vol. II.

(*s*) See *Re Fieldwick*, 1909, 1 Ch. 1; 78 L. J. Ch. 153; M. W. P. Act, 1893, s. 1.

(*t*) Sug., Pow. 8th ed., 536.

(*u*) *Johnson v. Clark*, 1908, 1 Ch. 303; 77 L. J. Ch. 127.

(*x*) See Dissertation on Husband and Wife in Vol. II.

(*y*) By this custom an infant on attaining the age of fifteen years can convey by feoffment on a sale for valuable consideration. See *Re Muskell and Goldfinch*, 1895, 2 Ch. 525; 64 L. J. Ch. 678.

(*z*) *Flight v. Bolland* (1828), 4 Russ. 298.

(*a*) Dart, 7th ed., 32.

(*b*) *Edwards v. Carter*, 1893, A. C. 360; 63 L. J. Ch. 100; see also *Re Jones*, 1893, 2 Ch. 461; 62 L. J. Ch. 996; *Viditz v. O'Hagan*, 1900, 2 Ch. 87; 69 L. J. Ch. 507.

Consequences  
of avoiding  
contract by  
infant on  
coming of age.

An infant who, on coming of age, avoids a contract, is entitled to be repaid any money paid by him in part performance (*c*), unless he has derived some advantage from the contract, and is unable to restore the other party to the same position as he would have been in if there had been no contract (*d*). In accordance with this doctrine, it is apprehended that an infant who has paid a deposit on a contract for purchase is entitled to recover it if he refuses to complete when he comes of age (*e*).

Infant cannot  
take advantage  
of his  
own fraud.

It has been said that equity will not allow an infant to take advantage of his own fraud. This doctrine would not make a contract for sale or purchase binding on an infant who has represented himself to be of full age, but it would probably prevent him from recovering money paid by him to the other party who was deceived by such representation (*f*).

The Infants' Relief Act, 1874, makes invalid all contracts entered into by infants for repayment of money lent or for goods supplied (other than necessities), and which contracts were before the Act voidable.

Act does not  
apply to sale  
or purchase,  
but invalidates  
mortgage of  
land.

It has been held that s. 1 of this Act does not apply to contracts for sale or purchase of land (*g*), but it makes absolutely void a mortgage of land by an infant, even though the money advanced has been applied in the improvement of the property (*h*).

Powers of  
S. L. Acts may  
be exercised on  
behalf of  
infant.

Where a person who is in his own right seised of or entitled in possession to land, is an infant, or where a tenant for life, or a person having the powers of a tenant for life under the S. L. Act, 1882, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under the

(*c*) *Hamilton v. Vaughan-Sherrin, &c. Co.*, 1894, 3 Ch. 589; 63 L. J. Ch. 795.

(*d*) *Holmes v. Blogg* (1818), 8 Taunt. 508; *Ex parte Taylor* (1856), 8 De G. M. & G. 254; 25 L. J. Bk. 35.

(*e*) The dictum in Sug., 14th ed., 209, to the contrary seems incorrect.

(*f*) *Ex parte Unity, &c. Association* (1858), 3 De G. & J. 63; 27 L. J. Ch. 585; *Re Jones* (1881), 18 Ch. D. 109; 50 L. J. Ch. 673.

(*g*) *Duncan v. Dixon* (1890), 44 Ch. D. 211; 59 L. J. Ch. 437.

(*h*) *Nottingham, &c. Building Society v. Thurstan*, 1903, A. C. 6; 72 L. J. Ch. 134.

Act, the trustees of the settlement may, on his behalf, enter into a valid contract for sale (*i*).

The Court has no power to sell or mortgage an infant's land under its original jurisdiction upon the ground that the sale would be to his advantage (*k*). But the Court will sometimes, on the principle of salvage, direct the trustees to sell or mortgage a part in order to save the remainder, *e.g.*, for the repair or rebuilding of houses which are in a dangerous condition (*l*).

Cases where Court may order a sale of infant's land.

### *Lunatics.*

Lunatics are incapable of making a valid disposition of their property and of entering into binding contracts, subject, however, to this qualification, that a contract, whether executed or executory, entered into *bonâ fide*, is not void by reason of one of the parties having been at the time of unsound mind, where such unsoundness is not known to the other party; and this doctrine seems to apply to sales, mortgages, and other dealings with land or other property for valuable consideration (*m*).

Lunatics, their acts void, except in case of executed contract, where lunacy was not known to other party.

An inquisition finding a person a lunatic is conclusive until superseded, except as to testamentary capacity, of his incapacity to dispose of his property, make any binding contract, or execute any valid deed (*n*).

The Lunacy Act, 1890, contains provisions for the management and administration of the property of a lunatic, which provisions apply not only to lunatics so found by inquisition, but also to every person lawfully detained as a lunatic although not so found

Powers conferred by Lunacy Act as to management and administration.

(*i*) S. L. Act, 1882, ss. 59, 60; Wolst. Conv. Acts, 9th ed., 422, 423.

(*k*) *Calvert v. Godfrey* (1843), 6 Beav. 97; 12 L. J. Ch. 305; *Re Montagu*, 1897, 2 Ch. 8; 66 L. J. Ch. 541; *Re Hainbrough*, 1909, 2 Ch. 620; 79 L. J. Ch. 19.

(*l*) *Re Jackson* (1882), 21 Ch. D. 786; *Re De Teissier's S. E.*, 1893, 1 Ch. 153; 62 L. J. Ch. 552. See also *Re Willis*, 1902, 1 Ch. 15; 71 L. J. Ch. 73; *Re Legh's S. E.*, 1902, 2 Ch. 274; 71 L. J. Ch. 668.

(*m*) *Imperial Loan Co. v. Stone*, 1892, 1 Q. B. 599; 61 L. J. Q. B. 449. See *Molynaux v. Natal Land, &c. Co.*, 1905, A. C. 555, at 562; 74 L. J. P. C. 108; also *Re Pagani*, 1892, 1 Ch. 236.

(*n*) *Re Walker*, 1905, 1 Ch. 160; 74 L. J. Ch. 86.

by inquisition, and to every person not so detained and not found a lunatic by inquisition with regard to whom it is proved to the satisfaction of the judge in lunacy that such person is, through mental infirmity arising from disease or age, incapable of managing his affairs. In the case of a lunatic not so found by inquisition, the judge may appoint a person (usually called a receiver) to exercise all or any of the powers of a committee (*o*).

The judge may order any property of the lunatic to be sold, mortgaged, dealt with, or otherwise disposed of, in order to raise money for any of the purposes therein mentioned (*p*). He may also by order authorise and direct the committee or receiver to sell, make exchanges or partitions, grant leases of any property belonging to the lunatic, surrender and accept surrenders of leases, execute any powers of leasing vested in a lunatic having a limited estate, perform any contracts relating to the property of the lunatic entered into by him before the lunacy, surrender any onerous property belonging to the lunatic, and exercise any power vested in the lunatic for his benefit (*q*).

Sale moneys,  
&c. to remain  
in equity real  
or personal  
estate accord-  
ing to nature  
of property  
sold.

In the case of any sale, mortgage, or other disposition of a lunatic's real property, the money arising thereby which is not applied under the powers of the Act belong to the lunatic and his heirs, executors, administrators, next of kin, devisees, legatees, and assigns for the same interest as he or they would have had in the property if such sale, &c. had not been made, and will be real or personal estate according to the nature of the property sold, &c. (*r*).

Committee  
may execute  
deeds.

The committee of the estate, or such person as the judge approves, may, in the name and on behalf of the lunatic,

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(*o*) Lunacy Act, 1890, s. 116; the receiver may now be authorised to exercise the S. L. Act or other powers on behalf of the lunatic: Lunacy Act, 1908, s. 1.

(*p*) Lunacy Act, 1890, s. 117.

(*q*) S. 120. Under this s. and s. 117 the judge may sanction a sale in consideration of a perpetual rent-charge: *Re Ware*, 1892, 1 Ch. 344; 61 L. J. Ch. 279.

(*r*) S. 123.

execute and do all assurances and things for giving effect to any order under the Act (s), but is not accountable in lunacy for money received after the lunatic's death (ss).

Where a tenant for life, or a person having the powers of a tenant for life under the S. L. Acts, is a lunatic so found by inquisition, the committee of his estate may, under an order of the judge in lunacy, exercise the powers of the Act in his name and on his behalf (t). The same rule applies now to the receiver where a tenant for life is a lunatic not so found (u).

Sales where lunatic is tenant for life.

The judge in lunacy has jurisdiction, in the administration of the lunatic's estate, to lay out personal estate in the purchase of land; but it is the practice in such cases to insert in the conveyance a declaration that the land purchased shall be considered part of the lunatic's personal estate. The validity of such a declaration was upheld by the House of Lords on the ground that when trustees without authority invest trust money in the purchase of land, the interest of the *cestui que trust* remains in equity personal estate, and that the Court, if it chooses, may make it a condition of a similar investment on their part that the lunatic's right shall be the same as if it had been made without authority (v).

When personal estate of lunatic is laid out in purchase of land, it is usual to declare that land shall be personal estate in equity,

In accordance with this principle, on an enfranchisement of a lunatic's copyhold land—the rules of descent as to which were different from those as to the descent of the freehold—the Court made a declaration that on the death of the lunatic intestate the heir-at-law should hold the land in trust for the persons who would have been customary heirs if it had not been enfranchised (y).

and that enfranchised copyhold shall go to customary heir.

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(s) S. 124.

(ss) *Re Walker*, 1907, 2 Ch. 120; 76 L. J. Ch. 580.

(t) S. L. Act, 1882, s. 62.

(u) Lunacy Act, 1908, s. 1, which disposes of the points raised in *Re Baggs*, 1894, 2 Ch. 416, n.; 63 L. J. Ch. 612; *Re S. S. B.*, 1906, 1 Ch. 712; 75 L. J. Ch. 522; *Re De Moleyns and Harris*, 1908, 1 Ch. 110; 77 L. J. Ch. 9; and other cases mentioned in Wolst. Conv. Acts, 9th ed., 426.

(v) *A.-G. v. Marg. of Ailesbury* (1887), 12 A. C. 672; 57 L. J. Q. B. 83. See *Baldwyn v. Smith*, 1900, 1 Ch. 588; 69 L. J. Ch. 336.

(y) *Re Ryder* (1882), 20 Ch. D. 514.

*Persons convicted of Treason or Felony.*

Forfeiture and  
escheat for  
treason and  
felony at  
common law.

By the common law, the real and personal property of a person convicted of treason or felony was forfeited to the Crown, or in the case of copyholds to the lord, either on attainder or on conviction according to the nature of the property ; but as regards freehold land on attainder the forfeiture was for a limited period only, subject to which the inheritance in fee (unless gavelkind) went to the lord by escheat. Forfeiture and escheat as regards land had relation back to the commission of the offence. Moreover, the blood of a person attainted for treason or felony was supposed to be corrupted, so that he could not inherit land (z).

Corruption  
of blood.

Abolished.

Consequences  
of conviction  
according to  
present law.

Attainder, corruption of blood, forfeiture, and escheat for treason or felony (except for outlawry) are abolished by the Forfeiture Act, 1870. Under that Act, when a person is convicted of treason or felony, and judgment of death or of penal servitude is pronounced or recorded against him, he becomes incapable of alienating or charging any property, or making any contract, so long as he remains subject to the operation of the Act (a). The custody and management of his property is committed to an administrator to be appointed by His Majesty, or by a person authorised in that behalf by His Majesty's sign manual, and in whom all the real and personal property belonging to him at the time of his conviction, or acquired by him while he remains subject to the operation of the Act, vests, and who has absolute power to let, mortgage, sell, convey, and transfer (b). On the death or bankruptcy of a convict, or on his having undergone the full term of penal servitude, or obtaining a pardon, he ceases to be subject to the operation of the Act, and thereupon all the property remaining vested in the administrator has to be restored to him or his representatives (c).

Power of  
administrator  
of convict's  
property.

(z) Goodeve, R. P., 5th ed., 370 ; 4 Byth. & Jarm, 3rd ed., "Forfeiture."

(a) Ss. 6, 8.

(b) Ss. 9, 10, 12 ; *Carr v. Anderson*, 1903, 2 Ch. 279 ; 72 L. J. Ch. 534 ; *Re Gaskell and Walters*, 1906, 2 Ch. 1 ; 75 L. J. Ch. 503.

(c) Ss. 7, 18, 29.

Property acquired by a convict while at large under a licence is excepted from the operation of the Act (*d*). If no administrator is appointed, the justices of the peace may appoint an interim curator (*e*). Interim curator.

Trust and mortgage estates vested in a convict do not pass to the administrator under the Forfeiture Act, 1870, but devolve as if he had not become a convict (*f*).

### *Corporations.*

Land cannot be assured to or for the benefit of or acquired by or on behalf of any corporation in mortmain, otherwise than under the authority of a Royal licence, or of a statute for the time being in force; and if any land is so assured otherwise than as aforesaid, it is forfeited to the Crown from the date of the assurance, subject to certain rights in favour of the mesne lord (if any) (*g*). Corporation can acquire land only by licence from Crown or under statute.

A joint stock company registered under the Companies (Consolidation) Act, 1908, is thereby empowered to hold lands, subject to a restriction, as regards companies formed for the purpose of promoting art, science, religion, charity, or any other like object not involving the acquisition of gain by the company or the individual members thereof, that they cannot, without the sanction of the Board of Trade, hold more than two acres (*h*). Joint stock company may hold lands.

A corporation entitled by statute or Royal licence to hold land has, at the common law, a general right of alienation (*i*); but this right has, as regards ecclesiastical and municipal corporations, and in certain other cases, been restricted by statute (*k*). Corporations entitled to hold land may alienate unless restricted by statute.

As a general rule, a contract by a corporation must be under Contracts by corporations

(*d*) S. 30.

(*e*) S. 21.

(*f*) T. Act, 1893, s. 48.

(*g*) Mortmain Act, 1888, Part I.

(*h*) Ss. 16, 19.

(*i*) *Colchester Corpn. v. Lowten* (1813), 1 V. & B. 226.

(*k*) See *Davis v. Leicester Corpn.*, 1894, 2 Ch. 208, 228; 63 L. J. Ch.

to be under common seal. Exceptions in case of companies formed under certain Acts.

their common seal. But this rule has been modified as to public companies formed under the C. C. C. Act, 1845, and also as to companies formed under the Companies (Consolidation) Act, 1908. The former Act, s. 97, enables the directors, or any two of them, to sign a contract on behalf of the company. And by the Companies (Consolidation) Act, 1908, s. 76, it is provided that any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company.

*Trustees and other persons in a fiduciary position.*

Purchase by a trustee from *cestui que trust* liable to be set aside.

What must be proved, in order to support purchase.

It is a rule of equity that a purchase by a trustee from his *cestui que trust*, although not necessarily void, will be set aside at the instance of the vendor, unless the purchaser satisfies the Court, not only that the price was adequate, but that, before the contract was entered into, the fiduciary relation between the parties was shaken off, *quoad* the property forming the subject of the purchase, with the consent of the vendor freely and voluntarily given after full information communicated to him by the trustee on all matters affecting its value; and in determining whether the fiduciary relation was effectually shaken off, the Court will jealously examine all the circumstances, having regard in particular to the difficulty of ascertaining whether the trustee having acquired knowledge in that character has given the full benefit of it to the *cestui que trust*. In other words, the Court must be satisfied that the *cestui que trust* was in as favourable a position as regards the negotiations as if the fiduciary relation had never existed (1).

Who are not within rule.

The rule does not apply to a purchase by a mortgagee from a mortgagor (*m*), nor does it preclude a tenant for life from purchasing settled land, it being expressly provided by the S. L. Act, 1890,

(1) *Dougan v. Macpherson*, 1902, A. C. 197; 71 L. J. P. C. 62.

(m) *Knight v. Marjoribanks* (1849), 2 Mac. & G. 10.

s. 12, that in such a case the trustees of the settlement are to be the vendors. Nor does it apply to a person who has ceased to be a trustee for a considerable period (*n*).

The rule applies to a sale to himself by a mortgagee selling under his power of sale (*o*), also to a parent or guardian purchasing from his child or ward who has lately come of age, and to a solicitor or other person in a confidential position purchasing from his client (*p*), and in a case where the vendor's law agent purchased, nominally for another, but really for himself, the mere concealment of the fact that he was the real purchaser was held sufficient to vitiate the sale, even if fair in other respects (*q*), and this principle applies to a purchase by the solicitor of a bankrupt from the trustee in bankruptcy (*r*).

Parent,  
guardian,  
solicitor, &c.

In the case of a purchase by a solicitor, it is not sufficient that the client is advised by a separate solicitor, unless the latter is fully aware of all the circumstances and competent to give the client all necessary information (*s*).

Employment  
of separate  
solicitor.

Proceedings to set aside a sale on the ground of confidential relation between the parties ought to be instituted within a reasonable time (*t*). If the sale is set aside, the purchaser is entitled to have back his purchase-money with interest, and he must account for any profits received, but without interest (*u*). In a case where the purchaser was a solicitor, it was held that he must prove payment of the purchase-money by better evidence than the acknowledgment in the deed and a memorandum indorsed upon it (*x*).

Proceedings  
to set aside  
transaction

(*n*) *Re Boles*, 1902, 1 Ch. 244; 71 L. J. Ch. 130.

(*o*) *Hodson v. Deans*, 1903, 2 Ch. 647; 72 L. J. Ch. 751.

(*p*) *Savery v. King* (1856), 5 H. L. C. 627; 25 L. J. Ch. 482; *Tomson v. Judge* (1855), 3 Drew. 306; 24 L. J. Ch. 785; *Gibbs v. Daniel* (1862), 4 Giff. 1.

(*q*) *McPherson v. Watt* (1877), 3 A. C. 254.

(*r*) *Luddy's Trustee v. Pearl* (1886), 33 Ch. D. 500; 55 L. J. Ch. 884.

(*s*) *Wright v. Carter*, 1903, 1 Ch. 27; 72 L. J. Ch. 138.

(*t*) *Clanricarde v. Henning* (1861), 30 Beav. 175; 30 L. J. Ch. 865.

(*u*) *Silkstone, &c. Co. v. Edey*, 1900, 1 Ch. 167; 69 L. J. Ch. 73.

(*x*) *Gresley v. Mousley* (1862), 3 D. F. & J. 433; 28 L. J. Ch. 620. See *Bateman v. Hunt*, 1904, 2 K. B. 530, 538; 73 L. J. K. B. 782.

As to gifts  
*inter vivos*  
to solicitors,  
&c.

A gift *inter vivos* of any kind from a ward to his guardian or a client to his solicitor, or of trust property from a beneficiary to his trustee made pending such relation, cannot generally be sustained, and the same rule applies to other confidential relations (*y*). But if the donor intentionally abides by the gift after the confidential relation has ended, it cannot be impeached after his death (*z*). Nor does this rule apply to a gift by will, because it is the province of the Probate Division of the High Court to determine the question of fraud or undue influence as affecting any particular bequest, and, if a will is once admitted to probate, a Court of equity could only interfere by fixing a trust on the legacy in question, which it would not do merely because of the existence of the confidential relation (*a*).

SECT. III.—*The obligations arising under an open contract for sale of land, and how far they should be qualified by special conditions.*

*As to the vendor's title (b).*

Vendor bound  
to show good  
title.  
What involved  
in this obli-  
gation.

A vendor of land is bound to show that he has a good title (*bb*). This obligation involves the delivery to the purchaser of an abstract of title, the production of all deeds and documents stated in the abstract (not being instruments of record,) the identification of the property agreed to be sold with the property comprised in the several documents, and the proof by proper evidence of all matters of fact forming a link in the chain of title.

Formerly sixty  
years could be  
required.

Before the passing of the V. & P. and Conv. Acts, a purchaser under an open contract might require the title to be carried back

(*y*) *Hatch v. H.* (1804), 9 Ves. 292. See Voluntary Settlements, Vol. II.

(*z*) *Mitchell v. Homfray* (1882), 8 Q. B. D. 587; 50 L. J. Q. B. 460. See *Tyars v. Alsop* (1889), 5 T. L. R. 242.

(*a*) *Himlson v. Weatherill* (1854), 5 D. M. & G. 301; 23 L. J. Ch. 820. See also *Walker v. Smith* (1861), 29 Beav. 394; *Parfitt v. Lawless* (1872), L. R. 2 P. 462; 41 L. J. P. 68.

(*b*) See Dart, 7th ed., 315 *et seq.*

(*bb*) See *Re Huckleby and Atkinson* (1910), 54 Sol. J. 342; *Re Nichols & Fen Joel*, 1910, 1 Ch. 43; 79 L. J. Ch. 32.

sixty years at least, and all expenses of deducing and verifying the title had to be borne by the vendor. If a deed sixty years old was not a sufficient root of title, it had to be carried back further still. Thus, if a deed depended for its validity on a prior deed, *e.g.*, an appointment under a power, the prior deed had to be abstracted, and generally, whenever an abstracted deed recited or referred to an earlier document, the purchaser was entitled to the production (though not in all cases to an abstract) of the earlier document.

In some cases title had to be carried further back.

The obligations of a vendor of land as regards the commencement and evidence of his title have been considerably modified by ss. 1 and 2 of the V. & P. Act, 1874, and s. 3 of the Conv. Act, 1881, which are applicable to all contracts entered into after the commencement of those Acts respectively, and in the absence of any stipulation in the contract to the contrary (*c*).

Obligations of vendor modified by statutory provisions.

The word "abstract," in s. 3 (6) of the Conv. Act, 1881, does not relieve the vendor from the obligation of furnishing at his own expense a proper abstract of his title for the statutory period, whether the documents forming that title are in his possession or not (*d*). And where the lease of a house which was the subject of sale contained a covenant by the lessee to complete the house to the satisfaction of the lessor's surveyor, it was held that the vendor must produce the surveyor's certificate at his own expense, such certificate not being an evidence of title, but part of the title itself (*e*). On the other hand, a purchaser has been held bound by this sub-section to pay the expenses of searching for a document forming the root of the vendor's title, the vendor having stated, in reply to a requisition, that he did not know where the document was, although the contract contained no intimation that there was any difficulty about procuring its production (*f*).

As to expense of abstract ;

of completing title ;

of search for important document.

(c) See Wolst. Conv. Acts, 9th ed., 8, 21.

(d) *Re Johnson and Tustin* (1885), 30 Ch. D. 42; 54 L. J. Ch. 889; *Re Stamford, &c. Co. and Knight*, 1900, 1 Ch. 287; 69 L. J. Ch. 127. See also cases collected in Wolst. Conv. Acts, 9th ed., 25.

(e) *Re Moody and Yates* (1885), 30 Ch. D. 344; 54 L. J. Ch. 886.

(f) *Re Stuart and Olivant*, 1896, 2 Ch. 328; 65 L. J. Ch. 576.

As to deeds in possession of mortgagee.

Deeds in the possession of the vendor's mortgagee are within sub-s. 6 (*g*).

Right of purchaser to delivery of deeds on completion not affected.

The sub-section relates only to the expense of production and inspection, and does not affect the ordinary right of a purchaser to have the deeds delivered to him on completion, although the obtaining of the deeds for this purpose may cause the vendor trouble and expense (*h*).

Where documents should be produced.

Documents in the vendor's possession should be produced at his own residence, or at some convenient place near the property, or in London (*i*), *e.g.*, the office of his solicitor or his solicitor's London agents.

When a condition should be inserted as to commencement of title.

When the vendor has in his possession a deed forty years old which would form a good root of title, and the title is by the subsequent documents duly and regularly deduced therefrom, the abstract should be made to commence with that deed. Otherwise a special condition must be inserted making the title commence with a deed of more recent date. To insure against an oversight, it is usual and proper to fix in all cases the date of commencement.

Nature of deed forming root of title should be stated.

If it is proposed to commence the title with a deed less than forty years old, not being a conveyance on a sale, the nature of the deed should be stated. In a case where there was no such statement, and the deed was a voluntary one, the condition was held to be misleading (*k*).

Conditions limiting right to inquire about early title of two kinds, one allowing, the other precluding, objections *alimunde*.

Many cases have been decided as to the construction of conditions limiting the right of the purchaser to make inquiries about the title prior to a certain date. In some cases the condition has been held merely to preclude requisitions being made on the vendor, as in *Waddell v. Wolfe* (*l*), where on a sale of

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(*g*) *Re Willett* (1889), W. N. 66; 60 L. T. 735.

(*h*) *Re Duthy and Jesson*, 1898, 1 Ch. 419; 67 L. J. Ch. 218.

(*i*) Dart, 7th ed., 481.

(*k*) *Re Marsh and Granville* (1883), 24 C. D. 11; 53 L. J. Ch. 81. This is because a purchaser for value is presumed to have investigated the title, while a volunteer is not.

(*l*) (1874), L. R. 9 Q. B. 515; 43 L. J. Q. B. 138.

leasehold property it was stipulated that no requisition or inquiry should be made respecting the lessor's title, and it was held that this did not preclude the purchaser from showing *aliunde* that the lease was invalid. In other cases the condition has been held to mean that the title is to be accepted without objection. The following are instances of the latter kind, viz., (1) a condition that the purchaser shall accept such title as the vendor has, or shall accept the vendor's title without dispute (*n*); (2) a condition that the lessor's title "will not be shown and shall not be inquired into" (*n*); (3) a condition that the title prior to a certain date "shall not be required, investigated or objected to" (*o*); (4) a condition on the sale of a leasehold property that the purchaser shall make no objection or requisition in respect of the intermediate title between the lease and a certain deed of assignment, and shall "assume that the assignment vested in the assignee a good title" (*p*).

Instances of  
latter kind.

It is generally considered that the statutory condition in s. 3 (3) of the Conv. Act, 1881, comes within the former class.

If a person who has purchased under a condition of the latter class discovers *aliunde* that by reason of some fatal defect in the prior title the vendor cannot give him even a good holding title, the Court will not enforce specific performance. But in the absence of fraud (including as fraud intentional concealment), the contract is binding at law, and the purchaser cannot, on account of the defect, either rescind the contract, or, if he has paid a deposit, recover it (*q*). This distinction rests on no sound principle. The question ought to be, whether, according to the true construction of the contract, it was the meaning of the

Where title is  
a bad holding  
one, rule  
different in  
law and  
equity.

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(*m*) *Freme v. Wright* (1819), 4 Madd. 364; *Wilmot v. Wilkinson* (1827), 6 B. & C. 506; 5 L. J. (O. S.) K. B. 196; *Hume v. Pocock* (1866), 1 Ch. 379; 35 L. J. Ch. 731.

(*n*) *Hume v. Bentley* (1852), 5 De G. & S. 520; 21 L. J. Ch. 760.

(*o*) *Re Nat. Prov. Bank and Marsh*, 1895, 1 Ch. 190; 64 L. J. Ch. 255.

(*p*) *Re Scott and Alvarez*, 1895, 2 Ch. 603; 64 L. J. Ch. 821.

(*q*) *Re Scott and Alvarez*, *sup.*

parties that the purchaser should pay his purchase-money although the vendor cannot give him what he has undertaken to sell. If this was really the meaning, the purchaser ought to be held bound in equity as well as at law. If it was not, a court of law ought not to hold him bound.

Condition does not apply where vendor has disclosed defect, or where property already belongs to purchaser.

A condition that no earlier or other title shall be required or inquired into does not apply where the vendor has himself disclosed that his title is defective (*r*); and in a case where it was discovered that the property supposed to belong to the vendor really belonged to the purchaser, it was held that there was a common mistake, and the purchaser was not bound to pay for what was already his (*s*).

Condition requiring purchaser to assume truth of something.

A condition requiring a purchaser to assume something to be true is binding, although it may turn out to be untrue, unless the vendor was aware of its untruth at the date of the contract (*t*).

Vendor not protected, if he knows of a fatal defect and conceals it;

If a vendor knows that the property is subject to an easement or restrictive covenant or other outstanding interest or burden derogating from the absolute ownership, he is bound to disclose it, and cannot shelter himself under a condition making the title begin at a date subsequent to that of the instrument creating the easement, &c., or under a general condition which would be sufficiently comprehensive to cover it, if known to exist (*u*). And in a case where the conditions provided that no objection should be taken in respect of a specified underlease, or in respect of "any other underlease" prior to a certain date, and it appeared that there was another existing underlease known to the vendor, it was held that he ought to have disclosed it, and

(*r*) *Smith v. Robinson* (1879), 13 Ch. D. 148; 49 L. J. Ch. 20.

(*s*) *Jones v. Clifford* (1876), 3 Ch. D. 779; 45 L. J. Ch. 809.

(*t*) *Best v. Hamand* (1879), 12 Ch. D. 1; 48 L. J. Ch. 503; *Re Banister* (1879), 12 Ch. D. 131; 48 L. J. Ch. 837. See *Blaibery v. Keeres*, 1906, 2 Ch. 175; 75 L. J. Ch. 464; *Re Sandbach and Edmondson*, 1891, 1 Ch. 99; 60 L. J. Ch. 60. See also *Smith v. Watts* (1859), 4 Drew. 338; 28 L. J. Ch. 220.

(*u*) *Heywood v. Mallalieu* (1883), 25 Ch. D. 357; 53 L. J. Ch. 492; *Nottingham, &c. Co. v. Butler* (1886), 16 Q. B. D. 778; 55 L. J. Q. B. 280; *Re Coe and New*, 1891, 2 Ch. 109; *Re Nisbet and Potts*, 1906, 1 Ch. 386; 75 L. J. Ch. 238.

had not relieved himself of this obligation by the general condition (*x*).

A similar principle would no doubt be held to apply if a vendor, knowing that he had only a determinable estate, were to contract to sell the fee simple, and, in order to keep back the document showing what his estate really is, were to stipulate that a document of more recent date should be the root of title (*y*). Such a stipulation would, in fact, be fraudulent.

or that he has a less estate than he professes to sell.

If a vendor brings an action for specific performance, the purchaser may allege by way of defence some definite objection to the title, *e.g.*, the existence of a covenant not to carry on a particular business on the property, and may obtain a discovery of the vendor's documents relevant to that issue, although prior in date to the stipulated commencement of title. But a general allegation that the documents would show a bad title, or the existence of restrictive covenants, without specifying their nature, would be insufficient (*z*).

Right of purchaser to discovery of documents in action for specific performance.

If the facts of a title are stated, and it is then stipulated that the purchaser shall take such title as those circumstances can confer upon the vendor, the purchaser will be bound to take the title, such as it is; but if the conditions go on to state as a positive fact, and not as a conclusion of law from the circumstances detailed, that the vendor has a power to sell the fee, the purchaser is entitled to require the vendor to show his power to sell, as it may have arisen from separate and independent sources (*a*).

Statement that vendor has power to sell must be proved.

If any of the title deeds are missing, a condition should be inserted to preclude objection on that account. But the mere fact that title deeds are missing does not release the purchaser from his contract, if satisfactory secondary evidence is furnished

Condition where deeds are missing

(*x*) *Edwards v. Wickwar* (1865), 1 Eq. 68; 35 L. J. Ch. 48.

(*y*) See *Else v. E.* (1872), 13 Eq. 196; 41 L. J. Ch. 213; *Edwards v. McLeay* (1818), 2 Swanst. 287; *Carlisle v. Salt*, 1906, 1 Ch. 335; 75 L. J. Ch. 175.

(*z*) *Jones v. Watts* (1890), 43 Ch. D. 574.

(*a*) *Johnson v. Smiley* (1853), 17 Beav. 223; 22 L. J. Ch. 826.

to him within a reasonable time as to the contents, execution, and stamping of them (*b*).

Right of purchaser to abatement of purchase-money where there is a partial defect of title.

If a vendor is able to make a good title to a part only of the property which he has agreed to sell, or to a limited interest only in it, the purchaser, as a general rule (*c*), is entitled to take what the vendor can give him, with an abatement of his purchase-money by way of compensation (*d*). This doctrine has been applied, (1) where on a sale of the fee simple it turned out that the vendor had a life estate only, with remainder to another in fee (*e*); (2) where on a sale of the fee simple it turned out that there was a prior life interest which the vendor could not get in (*f*); and (3) where on a sale of the entirety it turned out that the vendor had only an undivided moiety (*g*). But the doctrine will not be applied where the compensation cannot be assessed with fairness to both parties, *e.g.*, where the defect consists in the property being subject to restrictive covenants of which the vendor was unaware at the date of the contract (*h*).

Purchaser not bound to take part with abatement.

A purchaser, though entitled, cannot be compelled to take a part instead of the whole, unless the part which the vendor cannot give him is so insignificant that the want of it must be immaterial. It is the tendency of the Court to hold that a purchaser is entitled to have that which he contracted for (*i*).

When notice of defective title precludes purchaser from objecting.

The legal implication arising out of the contract of sale, that the vendor must show a good title, may be rebutted by evidence

(*b*) *Re Halifar, &c. Co. and Wood* (1898), 15 T. L. R. 106; 79 L. T. 536.

(*c*) The rule is of course liable to be modified by the terms of the contract, *e.g.*, a condition enabling the vendor to rescind. See *Re Jackson and Haden*, 1906, 1 Ch. 412; 75 L. J. Ch. 226.

(*d*) *Mortlock v. Buller* (1804), 10 Ves. 291, 315; approved, 2 Dow. 518.

(*e*) *Barnes v. Wood* (1869), 8 Eq. 424; 38 L. J. Ch. 683.

(*f*) *Nelthorpe v. Holgate* (1814), 1 Coll. C. C. 203; *Barker v. Cox* (1876), 4 C. D. 464; 46 L. J. Ch. 62.

(*g*) *Hooper v. Smart* (1874), 18 Eq. 683; 43 L. J. Ch. 704. See also *McKenzie v. Heskeith* (1877), 7 Ch. D. 675; 47 L. J. Ch. 231; *Barrow v. Scammell* (1881), 19 Ch. D. 175; 51 L. J. Ch. 296.

(*h*) *Rudd v. Lascelles*, 1900, 1 Ch. 815; 69 L. J. Ch. 396.

(*i*) *Knatchbull v. Gruber* (1817), 3 Mer. 124, 141; *Re Arnold* (1880), 14 Ch. D. 270.

that the purchaser knew that the title was defective before he entered into the contract; but if the contract expressly provides that the vendor shall show a good title, evidence of the purchaser's knowledge is inadmissible, as this would be allowing a written contract to be varied or contradicted by parol evidence (*k*).

Trustees ought not to sell subject to depreciatory conditions, but a purchaser cannot object to the title on that account (*l*). Depreciatory conditions.

*As to leaseholds, including property held by underlease.*

The statutory conditions contained in the V. & P. Act, 1874, s. 2, r, 1, and the Conv. Act, 1881, ss. 3 and 13, apply to contracts relating to leasehold property made after the commencement of the respective Acts and in the absence of any stipulation to the contrary (*m*). Statutory conditions as to leasehold property.

It follows that on a sale of property held by lease or underlease, the title will begin, in the absence of stipulation, with the lease or underlease. If, by the terms of the contract, the purchaser, instead of taking an assignment of the lease, is to take an underlease from the vendor, the title will begin with the lease, which the vendor will be bound to produce (*n*). Title to leaseholds begins with lease or underlease.

The purchaser of leasehold property under an open contract is not precluded by the above enactments from raising objections to the validity of a lease on grounds appearing on the face of it or appearing *aliunde* (*o*). Objection to lessor's title *aliunde*.

When property offered for sale is part of a larger property held under one lease, the fact should be stated in the particulars, as otherwise a purchaser might object, on the ground that he would be liable to eviction under the condition of re-entry for breaches of covenant committed in respect of the remaining If it is held with other property under same lease, fact should be stated.

(*k*) *Re Gloag and Miller* (1883), 23 Ch. D. 320; 52 L. J. Ch. 654; *Cato v. Thompson* (1882), 9 Q. B. D. 616; *Ellis v. Rogers* (1885), 29 Ch. D. 661.

(*l*) T. Act, 1893, s. 14.

(*m*) See Wolst. Conv. Acts, 9th ed., 9, 20 *et seq.*

(*n*) *Gosling v. Woolf*, 1893, 1 Q. B. 39.

(*o*) *Jones v. Watts* (1890), 43 Ch. D. 574.

property. No such objection can be made if the fact is stated (*p*).

Purchaser has notice of usual covenants in lease, but there must be no misrepresentation.

A purchaser of leaseholds will be deemed to have notice of the covenants and provisions in the lease if they are usual ones, but not if they are unusual, unless an opportunity has been given him of inspecting the lease before the sale (*q*), and if the particulars contain any misrepresentation (*r*) or important omission, calculated to mislead a purchaser (*s*), he is not precluded from objecting merely because an inspection of the lease would have disclosed the real state of the case, nor by a stipulation that the vendor's title is accepted (*t*.)

Renewable leaseholds.

On the sale of leaseholds which have been renewed from time to time, it may be desirable to negative the right of the purchaser to call for the production of the surrendered leases.

An under-lease should be described as such.

If the property offered for sale is an underlease, the fact should appear in the particulars or in the conditions, for if it is described as a lease the contract cannot be enforced (*u*). The purchaser has a right to assume that he will be under no liabilities except those created by the lease under which he holds, whereas, if there is a superior lease, he will be liable to be evicted by the superior landlord in the event of any breach of the covenants in the superior lease. And it is apprehended that it would make no difference if the covenants in the two leases were identical, because, although the purchaser would be safe from eviction if he observed such covenants, he would, in the event of a breach, or an intended breach, have to settle with two landlords instead of one, and be to this extent in a worse position.

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(*p*) *Walter v. Maunde* (1820), 1 J. & W. 181; *Paterson v. Long* (1843), 6 Beav. 590; 13 L. J. Ch. 1.

(*q*) *Molyneux v. Hawtrey*, 1903, 2 K. B. 487; 72 L. J. K. B. 873.

(*r*) *Weston v. Savage* (1879), 10 Ch. D. 736; 48 L. J. Ch. 239.

(*s*) *Jones v. Rimmer* (1880), 14 Ch. D. 588; 49 L. J. Ch. 775; *Re Davis and Carey* (1888), 40 Ch. D. 601; 58 L. J. Ch. 143.

(*t*) *Re Haedicke and Lipski*, 1901, 2 Ch. 666; 70 L. J. Ch. 811.

(*u*) *Darlington v. Hamilton* (1854), Kay, 550; 23 L. J. Ch. 1000; *Blake v. Phinn* (1847), 3 C. B. 976; 16 L. J. C. P. 159.

It is considered that no objection could be made merely because the grantor of the lease, which is the subject of the purchase, was the owner of a chattel interest only in the land, *e.g.*, a long term of years subject to a nominal rent, and free from any covenant or condition of re-entry (*x*). In such a case the instrument creating the term would create no liability by which the purchaser could be affected directly or indirectly.

If leasehold property has been sub-demised to a mortgagee, and he, or some person deriving title under him, puts it up for sale, describing it as held for the whole term created by the lease, without disclosing that the principal term is outstanding, this is a misdescription which invalidates the sale (*y*).

The statutory rules which preclude a purchaser, in the absence of stipulation, from requiring the production of the title to the freehold or leasehold reversion, do not exempt him from the application of the doctrine of constructive notice, it being negligence on his part to enter into a contract which does not negative those rules. It follows that where the property is valuable, being subject only to a ground rent, and the lease is recent, and the lessor is not a person whose title is well known, a prudent purchaser will insist on the contract containing a stipulation enabling him to require the production of some evidence of the lessor's title. This observation applies with increased force where the property sold is held by underlease, it being important that the purchaser should know what are the covenants and conditions of the head lease, the breach of which would give the head lessor the right to re-enter (*z*).

On the sale of an estate held for lives the vendor must supply the purchaser (at the latter's expense) with the requisite evidence in proof of the existence and correct ages of the *cestuis que vie*.

(*x*) See *Darlington v. Hamilton*, *sup.* (*u*).

(*y*) *Madeley v. Booth* (1848), 2 De G. & S. 718; *Re Byffus and Master* (1888), 39 Ch. D. 110. See also *Re Scott and Eave* (1902), 86 L. T. 617.

(*z*) *Patman v. Harland* (1881), 17 Ch. D. 353; 50 L. J. Ch. 642; *Re Nisbet and Potts*, 1906, 1 Ch. 386, 411; 75 L. J. Ch. 238.

If head lease creates no right enforceable against underlessee, objection does not apply.

Mortgagee by demise must not describe property as held for whole term.

When purchaser should insist on a stipulation enabling him to inquire into lessor's title.

Property held for lives.

*Easements and restrictive covenants.*

Easements and restrictive covenants an objection to title.

In what cases knowledge of purchaser precludes objection.

Easement must be disclosed, notwithstanding general condition.

Restrictive covenants do not bind purchaser without notice or any person claiming under him with notice, but subsequent purchaser cannot be compelled to rely on predecessor's want of notice.

The existence of easements, restrictive covenants, or other burdens derogating from the absolute ownership of the property, constitutes a valid ground of objection to the title, if the purchaser did not know of them at the date of the contract (*a*). If a vendor has expressly agreed to make a marketable title, or to sell free from incumbrances, he is bound to procure a release of all burdens of this kind, whether the purchaser was aware of them or not (*b*).

A general condition, that the property is sold subject to all easements affecting the same, does not exempt the vendor from the obligation of disclosing an easement of which he was aware (*c*).

As to restrictive covenants, it will be borne in mind that the burden of them does not run with freehold land at law, and that, after the land affected by them has been acquired by a *bona fide* purchaser for value without notice, they cannot be enforced in equity either against that purchaser or against any person claiming title under him, whether the latter has notice of them or not. But a purchaser who after the contract discovers the existence of covenants of this kind cannot be compelled to complete, because his title will depend on the vendor's want of notice, and he may find that he has bought a law suit (*d*). Moreover, a purchaser who buys under a condition precluding him from requiring a forty years' title has constructive notice of any restrictive covenant contained in a deed less than forty years old, but dated before the stipulated root of title (*e*).

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(*a*) *Ellis v. Rogers* (1885), 29 Ch. D. 661; *Re Elsworth and Tidy* (1889), 42 Ch. D. 23; 58 L. J. Ch. 665; see also *Re Gloag and Miller* (1883), 23 Ch. D. at p. 327; 52 L. J. Ch. 654.

(*b*) *Cato v. Thompson* (1882), 9 Q. B. D. 616.

(*c*) *Heywood v. Mallalieu* (1883), 25 Ch. D. 357; 53 L. J. Ch. 492; and see *sup.*, p. 36.

(*d*) *Nottingham, &c. Co. v. Butler* (1886), 16 Q. B. D. 778, 790; 55 L. J. Q. B. 280. Compare *Re Handman and Wilcox*, 1902, 1 Ch. 599; 71 L. J. Ch. 263.

(*e*) *Re Nisbet and Potts*, 1906, 1 Ch. 386; 75 L. J. Ch. 238.

*As to other incumbrances.*

If the property is subject to any incumbrance which cannot be discharged, the conditions should provide for this defect in the title. All the facts connected with such incumbrance should be accurately stated; and, if it is not likely to be enforced, it may be sufficient to bind the purchaser to make no objection on that account; and in other cases it may be expedient to offer an indemnity to the purchaser, and to provide that he shall be satisfied therewith; but it is very important that the terms and nature of the indemnity should be clearly stated. In the absence of special contract, a purchaser cannot be compelled to take a defective title with an indemnity, nor can a vendor be compelled to give an indemnity (*f*).

When property liable to charges which cannot be paid off.

The Conv. Act, 1881, s. 5, enables the Court on a sale to make an order discharging land from an incumbrance on sufficient provision being made to meet it in the manner mentioned in the Act (*g*).

Power of Court to provide for incumbrances and to free land therefrom.

A quit-rent or other perpetual annual sum charged on land may be redeemed at a price fixed by the Board of Agriculture and Fisheries, and a certificate of the Board is conclusive evidence of the redemption (*h*). Powers to override family charges are conferred by the S. L. Acts (*i*).

Quit-rents and family charges.

Tithe rent-charge, and land tax, are not incumbrances, so that if nothing is said about them in the contract, the purchaser takes the property subject to them, and can make no objection on that account (*j*).

Tithe rent-charge and land tax not incumbrances.

*As to stamping of documents.*

A purchaser is entitled to require that all the title deeds bear the proper stamp. If any deed executed before the 17th May, 1888, is unstamped or insufficiently stamped, the conditions should provide that the expense of stamping shall be borne by

Purchaser may require deeds to bear proper stamp.

(*f*) Dart, 7th ed., 1081.

(*g*) See Wolst. Conv. Acts, 9th ed., 35.

(*h*) Conv. Act, 1881, s. 45; Wolst. Conv. Acts, 9th ed., 113.

(*i*) S. L. Act, 1882, s. 20; S. L. Act, 1890, s. 4.

(*j*) See Dart, 7th ed., 393, 395.

the purchaser, if he requires it to be done. Such a condition would be void as to any deed dated after the 16th May, 1888 (*k*).

*As to identification of parcels.*

Identification. It is a necessary part of the deduction of a good title to provide satisfactory evidence of the identity of the parcels. To do this completely is often difficult, so that some provision qualifying the purchaser's right in this respect is generally introduced. In a case where it was provided "that no further evidence of identity shall be required than what is afforded by the abstract or the documents therein abstracted," and the descriptions in the documents differed among themselves and from the descriptions in the particulars of sale, the purchaser was held entitled to further proof of identity (*l*). And in another case, where it was provided "that the purchaser shall not require any further proof of identity than is furnished by the title deeds themselves," Kindersley, V.-C., observed, "I am of opinion that under this condition, if the deeds do not show identity, the purchaser cannot call for any other evidence; but that, on the other hand, the contract is, in effect, that the deeds shall show identity, so that if they do not, a good title is not made" (*m*).

*As to the description of the property.*

What the  
particulars  
should state.

The particulars of sale, or, on a sale by private contract, the agreement itself, should accurately describe the house or land which is the subject of sale, and, if the vendor's interest is less than the fee simple, the nature of that interest (*mm*). If the property is let to a tenant, the nature and terms of the tenancy, and the rent paid by him, should be stated. If it is sold subject to any charge or obligation, this also should be stated; in short, the particulars should contain all such information as is necessary to inform the purchaser of the real nature of the property put

(*k*) Stamp Act, 1891, s. 117; as to further stamps, see now Fin. (1909-10) Act, 1910, s. 4 (3).

(*l*) *Flower v. Hartopp* (1843), 6 Beav. 476; 12 L. J. Ch. 39.

(*m*) *Curling v. Austin* (1862), 2 Dr. & Sm. 129; 10 W. R. 682.

(*mm*) Dart, 7th ed., 150.

up for sale (*n*). There must be no wilful concealment of anything which it is material for the purchaser to know, no ambiguity in the description which is likely to mislead him.

Before the Judicature Act, a misdescription rendered the sale void at law, but Courts of equity would oblige the purchaser to accept the property with an abatement of the purchase-money by way of compensation, in any case where he would thereby get the substantial benefit of his contract (*nn*). The rules of equity are now the rules of every branch of the Supreme Court of Judicature (*o*).

Rule of equity as to right of purchaser in case of misdescription.

It is usual, however, to make express provision for misdescriptions by a condition of sale. One in common use provides that misdescriptions in the particulars shall not annul the sale or entitle either party to compensation. Sometimes it is provided that compensation to be fixed by arbitration shall be allowed.

Condition as to compensation for misdescriptions.

These conditions apply only to such errors as in their absence would invalidate the sale (*p*). It is also settled that a vendor cannot avail himself of such conditions where the mistake is wilful and therefore amounts to a fraud, or where the misdescription is on a material and substantial point so far affecting the subject of the contract that it may be reasonably supposed that, but for such misdescription, the purchaser would not have entered into the contract at all. In such a state of facts the purchaser may be considered as not having purchased the thing which is the subject of sale (*q*).

Condition does not apply where mistake is wilful or affects the substance of the contract.

Where the property is described as containing a certain quantity without any qualification, and the actual quantity turns out to be less, the purchaser is, as a general rule, entitled to an abatement out of his purchase-money for the deficiency,

Error as to quantity.

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(*n*) Dart, 7th ed., 123.

(*nn*) *Halsey v. Grant* (1806), 13 Ves. 73, 79.

(*o*) Judicature Act, 1873, s. 25 (11).

(*p*) *Leslie v. Thompson* (1851), 9 Hare, 268; 20 L. J. Ch. 561; Dart, 7th ed., 146.

(*q*) *Flight v. Booth* (1835), 1 Bing. N. C. 370; 4 L. J. (N. S.) C. P. 66; *Re Fawcett and Holmes* (1889), 42 Ch. D. 150; 58 L. J. Ch. 763.

whether there is, or is not, the usual condition as to compensation (*r*).

Effect of expressions "or thereabouts," "more or less," "by estimation."

Qualifying words such as "or thereabouts," "more or less," or "by estimation," will only cover slight errors. Thus a purchaser has been compelled to accept without compensation property described as containing by estimation forty-one acres, more or less, but really containing only thirty-six acres (*s*); but not a farm described as containing "by estimation 349 acres, or thereabouts, be the same more or less," but which fell short of that quantity by 110 acres (*t*); nor property described as containing 753 square yards or thereabouts, but in fact containing only 573 square yards (*u*).

Vendor not bound to disclose patent defects.

As regards patent or obvious defects in the state and condition of the property, such as a purchaser with ordinary diligence could discover for himself, *e.g.*, its want of repair, or bad state of cultivation, or the existence of a footpath over a field (*x*), the vendor is not bound to mention them, but he must not studiously conceal them.

Latent defects, when a ground of objection, or for compensation.

The existence of an easement not discoverable by inspection of the property, and not known to the purchaser at the date of the contract, is an objection to the title enabling the purchaser to rescind the contract or to claim compensation under the ordinary condition, whether the vendor was aware of it or not (*y*). But as regards a latent defect affecting the condition or value of the property, but not the title (*z*), the general rule is that the Court will refuse specific performance if the vendor was aware of it at the date of the contract and did not disclose it, but not otherwise.

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(*r*) *Hill v. Buckley* (1811), 17 Ves. 394, where the reason for this rule is given.

(*s*) *Winch v. Winchester* (1812), 1 V. & B. 375. It is doubtful whether this case would be followed in the present day, although cited without disapproval in *Joliffe v. Baker* (1883), 11 Q. B. D. 255, 273; 52 L. J. Q. B. 609.

(*t*) *Portman v. Mill* (1826), 2 Russ. 570; 8 L. J. (O. S.) Ch. 161.

(*u*) *Whittemore v. W.* (1869), 8 Eq. 603; 38 L. J. Ch. 17. See *Re Terry and White* (1886), 32 Ch. D. 14; 55 L. J. Ch. 345.

(*x*) *Bowles v. Romul* (1800), 5 Ves. 508.

(*y*) *Ashburner v. Sewell*, 1891, 3 Ch. 405; 60 L. J. Ch. 784.

(*z*) *Debenham v. Sawbridge*, 1901, 2 Ch. 98; 70 L. J. Ch. 525.

This rule was applied to a case where both parties were unaware at the time, but discovered afterwards, that the neighbouring houses were used for immoral purposes, but not in a case where the property itself was used by the tenant for such purposes, on the ground that the purchaser would, if he completed, be exposed to criminal proceedings under the Criminal Law Amendment Act, 1885 (z).

The right of the purchaser to relief for a misdescription may be rebutted by showing that he was aware of the actual state of the property at the time of the purchase (a). But such knowledge must be proved, and will not be presumed from circumstances which render it probable that he possessed it. Thus it has been held that a purchaser cannot be presumed to know the measurements of a piece of land because it has been in his occupation (b), or to know of easements affecting it because he lived in the neighbourhood (c).

Right of purchaser to relief may be rebutted by proof of knowledge.

In the absence of any condition on the subject, a purchaser is not entitled to relief for a defect of title discovered after completion of the purchase, except so far as it is covered by the covenants for title (d). A condition allowing compensation for errors of description extends to errors discovered after completion, unless expressly limited to those discovered before (e). Breach of a collateral warranty, *e.g.*, as to drains, may also give rise to an action for damages even after conveyance (f).

As to errors discovered after completion.

Of late years a condition to the effect that the description shall be taken as correct, and that an error of description shall neither annul the sale nor give a right to compensation, has

Condition negating right to compensation.

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(z) *Lucas v. James* (1819), 7 Hare, 110; 18 L. J. Ch. 329; *Hope v. Walter*, 1900, 1 Ch. 257; 69 L. J. Ch. 166.

(a) *Dyer v. Hargrave* (1805), 10 Ves. 505; *Farebrother v. Gibson* (1857), 1 De G. & J. 602. See *Cato v. Thompson* (1882), 9 Q. B. 19, 616.

(b) *King v. Wilson* (1843), 6 Beav. 121.

(c) *Shackleton v. Sutcliffe* (1847), 1 De G. & S. 609.

(d) *Debenham v. Sawbridge*, 1901, 2 Ch. 98, 108; 70 L. J. Ch. 525.

(e) *Palmer v. Johnson* (1884), 13 Q. B. D. 351; 53 L. J. Q. B. 348.

(f) *De Lassalle v. Guildford*, 1901, 2 K. B. 215; 70 L. J. K. B. 533. But see *Greswolde-Williams v. Barneby* (1900), 83 L. T. 708.

Applies only  
to physical  
errors,

and cannot  
be relied on  
where mistake  
is serious.

Whether  
vendor can  
claim com-  
pensation for  
mistake.

Relief, where  
purchaser  
misled by  
ambiguity in  
particulars.

come into common use, particularly on sales of small properties. It has been held that such a condition applies only to physical errors, *i.e.*, errors in the description of the material thing which is the subject of sale, and not to errors which could not have been discovered by an inspection of the property (*g*). It has also been held that, in the event of a serious deficiency in quantity, this condition, while it prevents the purchaser from insisting on specific performance with compensation, does not enable the vendor to enforce specific performance without it (*h*).

A misdescription is generally one which makes the property appear more valuable than it really is. But it may happen that a mistake is made to the prejudice of the vendor. Suppose, for example, that the acreage is largely understated, or that the property is described as subject to some obligation materially diminishing its value, which does not in fact exist. If, in a case of this kind, the misdescription is the result of a *bonâ fide* mistake made under such circumstances as to be excusable, and it appears that the contract has been entered into by both parties and the price fixed on the basis of the incorrect statement, equity would not enforce specific performance against the vendor except on the terms of the purchaser paying an increased purchase-money. And this would, *a fortiori*, be so if there is the usual condition providing that compensation for misdescription shall be paid to as well as by the vendor (*i*).

If the particulars are ambiguous, so that a purchaser may not unreasonably have been led into a mistake as to the character of the property, and he shows by parol evidence that he did in fact make such mistake, specific performance will not be enforced against him (*k*). But if the particulars are plain, a purchaser

(*g*) *Re Beyfus and Master* (1888), 39 Ch. D. 110; *Re Puckett and Smith*, 1902, 2 Ch. 258; 71 L. J. Ch. 666.

(*h*) *Jacobs v. Redcll*, 1900, 2 Ch. 858; 69 L. J. Ch. 879.

(*i*) *Leslie v. Tompson* (1851), 9 Hare, 268; 20 L. J. Ch. 561; *Calverley v. Williams* (1790), 1 Ves. jun. 210; *Barendale v. Seale* (1855), 19 Beav. 601; 24 L. J. Ch. 385; *Price v. North* (1837), 2 Yo. & Coll. 620; 7 L. J. Ex. Eq. 9.

(*k*) *Manser v. Buck* (1848), 6 Hare, 443; *Torrance v. Bolton* (1872), 8 Ch. 118; 42 L. J. Ch. 177; and see *Blalberg v. Keeres*, 1906, 2 Ch. 175; 75 L. J. Ch. 464.

cannot resist specific performance on the ground that he has misunderstood them, such misunderstanding being due only to his own carelessness (*l*).

A verbal statement by the auctioneer at the time of sale is not admissible as evidence on the part of the plaintiff to vary or explain the particulars (*m*), but may sometimes be pleaded as a defence to an action for specific performance. Thus, in a case where the auctioneer verbally corrected a serious misdescription, it was held that the purchaser could not enforce specific performance with compensation for the misdescription, even if he did not hear the statement (*n*).

Verbal statement of auctioneer not admissible to vary particulars, except as a defence to action.

*As to land in Middlesex or Yorkshire.*

If the land is situated in Middlesex or in Yorkshire, the vendor should ascertain before he puts up the property for sale that all deeds and wills affecting it have been duly registered under the Local Registry Acts; and if any have not been so registered, a condition precluding objection on that account should be inserted.

Condition where documents not registered in county registry.

*As to time for delivery of abstract and for sending in requisitions, and condition enabling vendor to rescind on account of objections taken.*

A condition fixing the time within which an abstract should be delivered to the purchaser was formerly usual, but is now more commonly omitted except where the sale is made under the Court, in which case it is required by the Rules of the Supreme Court (*p*). If no time is fixed, the purchaser may serve

Time within which abstract should be delivered.

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(*l*) *Tamplin v. James* (1880), 15 Ch. D. 215; *Van Praagh v. Everidge*, 1902, 2 Ch. 266; 71 L. J. Ch. 598; reversed on another point, 1903, 1 Ch. 434; 72 L. J. Ch. 260.

(*m*) *Higginson v. Clowes* (1808), 15 Ves. 516.

(*n*) *Re Hare and O'More*, 1901, 1 Ch. 93; 70 L. J. Ch. 45.

(*p*) R. S. C., O. 51, r. 2.

a notice on the vendor fixing a reasonable time for the delivery of a proper abstract, and if such notice is not complied with may rescind the contract, and recover his deposit with interest, and also, where an imperfect abstract has been delivered, the costs incurred by him in investigating the title as shown by such imperfect abstract (*q*).

Condition requiring objections to be made within a given time.

Generally a purchaser is required to make his requisitions and objections within a given time, with power for the vendor to annul the sale if requisitions or objections are insisted on which he is unable or unwilling to remove or comply with.

*When taking possession is a waiver of objections to the title.*

Taking possession, when an acceptance of title.

The taking of possession by the purchaser is an equivocal act, but does not of itself amount to an acceptance of the title. In every case it is a question depending upon the circumstances whether the conduct of the purchaser is inconsistent with an intention to call for the title, or to insist on objections to it (*s*). In *Fleetwood v. Green* (*t*), specific performance was decreed against a purchaser who had remained in possession for a considerable time after the delivery of an abstract without making any objection; and in *Burnell v. Brown* (*u*), a purchaser was held to have waived any objection on the ground of the property being subject to a right of sporting, by taking possession with knowledge of the existence of such right.

If a contract contains no stipulation that possession may be taken before completion, and the purchaser takes possession, knowing that there are defects of title which are irremovable, the taking of possession is a waiver, but not so if the defects are removable (*x*).

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(*q*) *Compton v. Bagley*, 1892, 1 Ch. 313; 61 L. J. Ch. 113.

(*s*) *Simpson v. Sudd* (1854), 4 D. M. & G. 665; 24 L. J. Ch. 562. See Part, 7th ed., 512—514.

(*t*) (1809), 15 Ves. 594.

(*u*) (1820), 1 Jac. & W. 168.

(*x*) *Re Glouy and Miller* (1883), 23 Ch. D. 320; 52 L. J. Ch. 654.

*As to the time for completing the purchase.*

The contract should name the day on which the purchase is to be completed.

Day for completing the purchase.

In equity the time fixed for completion is held to be of the essence of the contract only in cases of express stipulation or necessary implication (*y*). If the property is of a wasting or precarious nature, or is required for immediate occupation or use, there would be grounds for such an implication (*z*). On the other hand, a stipulation for payment of interest by the purchaser, in case the contract is not completed on the day, would raise a contrary inference (*a*).

When time is of the essence of the contract.

If, where time is not originally of the essence of the contract, either party is guilty of unnecessary delay, the other party may give him a written notice limiting a reasonable time within which the thing required to be done must be done, and that, in case of default, the contract will be treated as at an end (*b*). If no time is fixed for completion, a reasonable time is implied (*c*).

Either party may, if the other is guilty of delay, fix a time for completion by reasonable notice.

It is assumed in the preceding paragraph that the thing required to be done is something within the power of the party to do, *e.g.*, the obtaining of some obtainable evidence, or the procuring of some person to concur in the conveyance whose concurrence the vendor is entitled to insist on (*d*). If the vendor can neither convey nor compel a conveyance from other parties, the purchaser may at once repudiate the contract, without waiting to see if the vendor can procure some third party to join (*e*).

If vendor has a bad title, purchaser need not give him time to acquire a good one.

(*y*) *Parkin v. Thorold* (1852), 16 Beav. 59; 22 L. J. Ch. 170.

(*z*) *Hudson v. Temple* (1860), 29 Beav. 536; 30 L. J. Ch. 251; *Tilley v. Thomas* (1867), L. R. 3 Ch. 61.

(*a*) *Webb v. Hughes* (1870), 10 Eq. 281; 39 L. J. Ch. 606; *Hatten v. Russell* (1888), 38 Ch. D. 334; 57 L. J. Ch. 425.

(*b*) *Green v. Serin* (1880), 13 Ch. D. 589; 49 L. J. Ch. 166.

(*c*) *Simpson v. Hughes* (1897), 66 L. J. Ch. 334; 76 L. T. 237; *Nosotti v. Auerbach* (1898), 79 L. T. 413.

(*d*) *Hatten v. Russell* (1888), 38 Ch. D. 334; 57 L. J. Ch. 425.

(*e*) *Bellamy v. Debenham*, 1891, 1 Ch. 412; 60 L. J. Ch. 166; *Re Cooke and Holland* (1898), 78 L. T. 106; *Maconchy v. Clayton*, 1898, 1 L. R. 291.

Vendor may cure a defect of title at any time before contract is repudiated on that account.

Damages for vendor's delay.

Rule as to interest in the absence of stipulation (*gg*).

Where usual condition as to payment of interest.

A vendor having a bad title at the date of the contract may cure the defect at any time before the day fixed for completion, or even afterwards, provided that the purchaser has not in the meantime repudiated the contract on that account (*f*).

Damages have been allowed to a purchaser for delay in completion occasioned by the default of the vendor in not using reasonable diligence to perform the contract (*g*).

*As to interest on the purchase-money.*

In the absence of express stipulation, the purchaser is liable to pay interest on the purchase-money from the day fixed for completion, and is entitled from the same time to receive the rent. If, however, the purchase is not completed on that day, owing to the vendor's fault or inability to make a good title, the purchaser will be bound to pay interest only from the time when a good title was first made (*h*), unless in the meantime he has entered into possession or receipt of the rents and profits (*i*), or exercised acts of ownership (*k*), in which case interest will run from the date of his so doing. Even if he takes possession he may free himself from the payment of interest by placing the money to a separate account and giving notice that it is lying idle (*l*). The rate of interest used to be 4 per cent. (*m*), and this rate, as regards debts, has not been altered (*n*).

It is usual, however, to insert an express condition making the purchaser liable to the payment of interest if "from any cause whatever," or if "from any cause other than the wilful default

(*f*) *Hoggart v. Scott* (1830), 1 Russ. & M. 293. See also Dart, 7th ed., 1065, 1066.

(*g*) *Jones v. Gardiner*, 1902, 1 Ch. 191; 71 L. J. Ch. 93.

(*gg*) See *Keeble v. Stilwell* (1898), 78 L. T. 383.

(*h*) *Esdaile v. Stephenson* (1822), 1 Sim. & St. 122; *Jones v. Mudd* (1827), 4 Russ. 118; 6 L. J. (O. S.) Ch. 26.

(*i*) *Fludyer v. Cocker* (1806), 12 Ves. 25.

(*k*) *Ballard v. Shutt* (1880), 15 Ch. D. 122; 49 L. J. Ch. 618.

(*l*) *Kershaw v. K.* (1869), 9 Eq. 56.

(*m*) *Wallis v. Sarel* (1852), 5 De G. & S. 429; 21 L. J. Ch. 717; Sug., 14th ed., 643.

(*n*) *Re Whiteford*, 1903, 1 Ch. 889, 896; 72 L. J. Ch. 540; see *Re Davy*, 1908, 1 Ch. 61; 77 L. J. Ch. 67.

of the vendor," the purchase is not completed on the appointed day.

*As to title deeds.*

All the deeds in the vendor's possession or power relating to the land sold, and not to other land retained by him, must be delivered to the purchaser on the completion of the purchase, however ancient such deeds may be (*o*). If the deeds relate to other land of the vendor, however small in value, or to the extinguishment of rights over such land (*p*), he is entitled by virtue of rule 5 in s. 2 of the V. & P. Act, 1874, to retain them; but this enactment applies only to land, so that if a deed relates to the land sold and also to personal property, *e.g.*, a policy of assurance which is retained by the vendor, the deed must be given up to the purchaser (*q*). If, under the old practice, a vendor had, on a previous sale of part of the property, given to a former purchaser a covenant for production, under which he would have remained personally liable after he had handed over the deeds, he could not on that account have retained them as against the subsequent purchaser, but he might perhaps have required a covenant from the latter to perform the covenant or indemnify him against future liability thereunder (*r*).

Deeds to be delivered to purchaser, unless they relate to other property of vendor.

Vendor who has given a covenant for production to former purchaser entitled to indemnity.

A vendor retaining deeds is bound either to covenant for their production, or to give to the purchaser a statutory acknowledgment of his right to the production and delivery of copies of them, and also (if he is a beneficial owner) an undertaking for their safe custody (*s*). The acknowledgment and undertaking are binding on the vendor personally so long only as the deeds are in his possession or control (*t*). If the vendor is a trustee

Vendor retaining deeds must give acknowledgment, and, unless a trustee, an undertaking for safe custody.

(*o*) *Parr v. Lovegrove* (1857), 4 Drew. 170, 182, n.; *Re Duthy and Jesson*, 1898, 1 Ch. 419; 67 L. J. Ch. 218.

(*p*) *Re Lehmann and Walker*, 1906, 2 Ch. 640; 75 L. J. Ch. 768.

(*q*) *Re Williams and Duchess of Newcastle*, 1897, 2 Ch. 144; 66 L. J. Ch. 543.

(*r*) Sug., 14th ed., 435.

(*s*) Conv. Act, 1881, s. 9.

(*t*) Sub-ss. 2, 9.

Inability of vendor to obtain acknowledgment from third parties when an objection to title.

Unless purchaser has right in equity to production.

Practice when property sold in lots.

Purchaser must pay for attested copies.

or mortgagee, it is the usual practice to stipulate that he shall give the acknowledgment, but not the undertaking. As regards documents not in the vendor's possession, and not being instruments of record (*tt*), the purchaser should see whether they are the subject of any existing covenant for production or statutory acknowledgment, the benefit of which will pass to him on completion. If they are not, he is entitled to require the vendor to procure such a covenant or acknowledgment from the person who holds them. If the vendor cannot do so, his inability will be an objection to the title, unless the circumstances are such that the purchaser will on completion have a right in equity to their production (*u*).

If the whole of an estate held under one title is sold in lots, the practice, in the absence of special stipulation, is for the purchaser of the largest portion in value to have the custody; but if any lot is not sold, the vendor may retain the deeds.

A purchaser is entitled, at his own expense (*y*), to have attested copies of documents not delivered to him, and office copies of such as are instruments of record.

#### SECT. IV.—*Remedies for obtaining performance of a contract, or relief for its breach, and other incidents of a contract.*

Vendor or purchaser can obtain opinion of judge in Chambers.

A vendor or purchaser of real or leasehold estate, or their representatives respectively, may at any time apply in a

(*tt*) See *Halkett v. Earl Dudley*, 1907, 1 Ch. 590; 76 L. J. Ch. 330.

(*u*) V. & P. Act, 1874, s. 2, r. 3. It is sometimes difficult to say whether there is an equitable right to the production of deeds (see Dart, 7th ed., 783, 784). In *Barclay v. Raine* (1823), 1 Sim. & St. 449, it was contended that where A. is in possession of deeds relating to his own lands as well as to lands of B., although he has no covenant for production, has a general right in equity to require A. to produce them; however, this equity was treated by Leach, V.-C., as doubtful. But in *Fain v. Ayers* (1826), 2 Sim. & St. 533; 4 L. J. (O. S.) Ch. 166, where on a sale and conveyance of land the vendor had given no covenant for production, the same judge was strongly inclined to think that the purchaser had an equity to require the production. See also 3rd Report of R. P. Commrs.

(*y*) Conv. Act, 1881, s. 3 (6).

In what cases equitable right to production exists.

summary way to a judge in Chambers, in respect of any requisitions or objections, or claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the validity of the contract), and obtain the decision of the judge thereon, and also as to the costs of the application (z). A summons under the V. & P. Act is intended for the determination of distinct isolated points arising under a contract, not the general question as to the soundness of the vendor's title (a). And although evidence be adduced tending to throw a doubt on the validity of the contract, the Court will decide on the summons a specific question under the contract as it stands (b).

Under s. 9 the judge has power to determine the validity of a notice to rescind the contract for sale (c), or, on declaring that a good title cannot be made, to decide that the deposit is to be repaid with interest, and that the vendor or purchaser, as the case may be, shall pay the costs of investigating the title, or that any other things shall be done which are the natural consequence of the decision (d); but he has no jurisdiction under this section to decide any point that does not concern the purchaser (e).

What questions can be so decided.

If a purchaser claims a return of his deposit on the ground of a misdescription, the question raised affects the validity of the contract, and cannot be decided on a vendor and purchaser's summons (f).

Claim to return of deposit.

The judge may decide questions arising on the form of the conveyance (g).

Form of conveyance.

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- (z) V. & P. Act, 1874, s. 9; Wolst. Conv. Acts, 9th ed., 13—15.  
 (a) *Re Wallis and Barnard*, 1899, 2 Ch. 515; 68 L. J. Ch. 753.  
 (b) *Re Hughes and Ashley*, 1900, 2 Ch. 595; 69 L. J. Ch. 741.  
 (c) *Re Jackson and Woodburn* (1887), 37 Ch. D. 44; 57 L. J. Ch. 243.  
 (d) *Re Hargreaves and Thompson* (1886), 32 Ch. D. 454; 56 L. J. Ch. 199;  
*Re Elsworth and Tily* (1889), 42 Ch. D. 23, 53; 58 L. J. Ch. 665; *Re Arbib and Class*, 1891, 1 Ch. 601; 60 L. J. Ch. 263; *Re Walker and Oakshott*, 1901, 2 Ch. 383; 70 L. J. Ch. 666.  
 (e) *Re Tippet and Newbould* (1888), 37 Ch. D. 444.  
 (f) *Re Davis and Carey* (1888), 40 Ch. D. 601; 58 L. J. Ch. 143. But see *Re Haedicke and Lipski*, 1901, 2 Ch. 666; 70 L. J. Ch. 811.  
 (g) Dart, 7th ed., 586; *Re Cooper and Cronlance* (1904), 90 L. T. 258.

Doubtful title  
not forced on  
purchaser.

A purchaser will not be compelled to take a doubtful title (*h*), but the Court will, as between vendor and purchaser, decide either for or against the title. As to what is a doubtful title, the following propositions may be regarded as the result of the decided cases:—(1) Where the title depends on the construction of a general Act of Parliament or some general principle of law, the Court ought to decide the point and enforce its decision against the purchaser, even though a Court of inferior jurisdiction may have decided the same point otherwise (*i*). But the Court ought to feel such confidence in the soundness of its own opinion as to be satisfied that no other Court of equal jurisdiction could reasonably arrive at a different conclusion (*k*). (2) The title will not be forced on a purchaser if he would after completion be probably exposed to litigation at the suit of a third party, with doubtful result (*l*). (3) A title will not be enforced where its validity depends on facts the accuracy of which the Court has not at the time sufficient means of judging, or where the evidence available is liable to be displaced or affected by evidence not known to the Court (*m*).

Action for  
specific per-  
formance.

Where the question between the parties is one which affects the validity of the contract, or for any other reason cannot be decided on a vendor and purchaser's summons, the remedy of the party aggrieved is by an action for specific performance or by an action claiming damages for the breach.

Measure of  
damages on  
breach of con-  
tract for sale.

The general rule of law that where a person makes a contract and breaks it he must pay the whole damage sustained in consequence does not apply to contracts for the sale of real estate, in respect of which a special rule has been established, viz., that on a breach of a contract of this nature arising from want of

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(*h*) *Pyrrke v. Waddingham* (1852), 10 Hare, 1.

(*i*) *Alexander v. Mills* (1870), 6 Ch. 121; 40 L. J. Ch. 73.

(*k*) *Palmer v. Locke* (1881), 18 Ch. D. 381; 51 L. J. Ch. 124; *Re Hollis' Hospital and Hague*, 1899, 2 Ch. 540; 68 L. J. Ch. 673.

(*l*) *Re Marshall and Salt*, 1900, 2 Ch. 202; 69 L. J. Ch. 542.

(*m*) *Re Handman and Wilcor*, 1902, 1 Ch. 599; 71 L. J. Ch. 263; *Re Douglas and Powell*, 1902, 2 Ch. 296; 71 L. J. Ch. 850.

title, the purchaser can only recover by way of damages the expense of investigating the title, and is not entitled to compensation for the loss of the bargain (*n*). This is so, though the vendor may be aware of his want of title, when he enters into the contract (*o*). But the special rule does not apply where the vendor has the means of making a good title, but declines to take the necessary steps to do so (*p*).

It is usual for the vendor to protect himself against liability to pay interest or costs in case of his not being able to make a title, by a condition enabling him to rescind in that event.

Conditions generally inserted in contracts to protect vendor against liability if unable to make title.

On a sale by auction, a vendor usually reserves to himself a power to re-sell the property in case of the purchaser's default, and to charge the latter with the deficiency in price, if any.

### *Other incidents of a contract.*

From the date of a valid contract for sale the vendor is, to some extent, a trustee of the land for the purchaser, subject to the right of the vendor to retain the land to protect his own interest under the contract pending completion (*q*).

Equitable conversion.

It follows that any loss or deterioration arising to the property after the contract and before the conveyance falls upon the purchaser. Thus, where freehold houses contracted to be sold were afterwards burnt down, the contract was enforced against

Loss happening after contract falls on purchaser, and benefit accruing after contract belongs to him.

(*n*) *Flureau v. Thornhill* (1776), 2 Wm. Bl. 1078.

(*o*) *Bain v. Fothergill* (1874), 7 H. L. 158; 43 L. J. Ex. 243. In a sale by the Court the purchaser may also recover other expenses besides those of investigating title: *Hollivell v. Seacombe*, 1906, 1 Ch. 426; 75 L. J. Ch. 289.

(*p*) *Engel v. Fitch* (1869), 4 Q. B. 659; 38 L. J. Q. B. 304; *Day v. Singleton*, 1899, 2 Ch. 320; 68 L. J. Ch. 593; *Jones v. Gardiner*, 1902, 1 Ch. 191; 71 L. J. Ch. 93; see *Pease v. Courtney*, 1904, 2 Ch. 503; 73 L. J. Ch. 760.

(*q*) *Shaw v. Foster* (1872), 5 H. L. 321; 42 L. J. Ch. 49. See also Dart, 7th ed., 287.

the purchaser, although the vendor had since the contract allowed the insurance to expire without giving him notice (*r*); and for the same reason, on the purchase of a life annuity, the purchaser must bear the loss arising from the death of the *cestui que vie* before the conveyance (*s*). On the other hand, the purchaser is entitled to any benefit which may accrue to the estate from circumstances happening between the contract and conveyance, as by the dropping of lives on the purchase of a reversionary interest, or by an increase or improvement in the value of the land (*t*); and where he purchases in consideration of a life annuity to be paid to the vendor, the contract will be enforced against the latter, though the annuity drops by the death of the *cestui que vie* before the conveyance (*u*).

Who entitled  
to insurance  
moneys in case  
of fire between  
contract and  
completion.

In the absence of stipulation a contract for the sale of a freehold house which has been insured by the vendor, and which is damaged by fire between the date of the contract and the completion of the purchase, does not pass to the purchaser the benefit of the insurance, and if the insurance money is paid to the vendor, he will be bound to repay it to the insurance company out of the purchase-money (*r*). But on the sale of a leasehold house where the lease contains a covenant to insure and rebuild, the purchaser indirectly gets the benefit of the insurance (*y*). If a fire occurs after completion

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(*r*) *Paine v. Meller* (1801), 6 Ves. 349. See also *Poole v. Shergold* (1786), 2 Bro. C. C. 117.

(*s*) *Kemney v. Wexham* (1822), 6 Madd. 355.

(*t*) *Harford v. Purrier* (1816), 1 Madd. 532, 539; as to increment value duty, see Preliminary Chap.

(*u*) *Mortimer v. Capper* (1782), 1 Bro. C. C. 155; *Jackson v. Lever* (1792), 3 Bro. C. C. 604.

(*v*) *Rayner v. Preston* (1881), 18 Ch. D. 1; 50 L. J. Ch. 472; *Castellain v. Preston* (1883), 11 Q. B. D. 380; 52 L. J. Q. B. 366; *Phoenix Assce. Co. v. Spooner*, 1905, 2 K. B. 753; 74 L. J. K. B. 792; Dart, 7th ed., 194. As to the rights of a tenant for life, see *Gaussen v. Whatman* (1905), 93 L. T. 101; *Re Quicke*, 1908, 1 Ch. 887; 77 L. J. Ch. 523, and article thereon in 53 Sol. J. 357.

(*y*) And see Fires Prevention (Metropolis) Act, 1774, s. 83; *Westminster Fire Office v. Glasgow, &c. Socy.* (1888), 13 A. C. 699.

the vendor has no insurable interest, and nothing can be recovered under a policy belonging to him (*z*).

A binding contract for sale is not avoided by the death of either party before completion. On the death of the vendor of freehold land his personal representatives have power, under the Conv. Act, 1881, s. 4, or the L. T. Act, 1897, s. 1, to convey such estate in the land as was vested in the deceased to the purchaser. The purchase-money is part of the vendor's personal estate, and the rents and profits of the land up to the day fixed for completion are part of his real estate (*a*). On the death of the purchaser, the land and the rents and profits of it after the day fixed for completion are part of his real estate, and the land itself is, under the R. E. C. Acts, 1867 and 1877, the primary fund for the payment of unpaid purchase-money (*b*).

A binding contract is a conversion in equity.

A general devise passes land contracted to be purchased after the date of the will, and a contract for the sale of land revokes in equity a previous devise made by the vendor (*c*); and the purchase-money passes under his will as part of his personal estate (*d*).

Effect of contract on devise.

A contract for sale is not avoided by the bankruptcy of either party. If the purchaser becomes bankrupt, his trustee may disclaim under the Bankr. Act, 1883, s. 55, as amended by the Bankr. Act, 1890, s. 13, and independently of disclaimer, specific performance will not be enforced against him (*dd*). If the vendor becomes bankrupt, his trustee is bound to complete, and cannot disclaim the contract unless the property is leasehold, in which case he must also disclaim the lease (*e*).

Effect of bankruptcy.

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(*z*) *N. S. Wales Bank v. N. British, &c. Insce. Co.* (1882), 3 N. S. W. L. R. 60.

(*a*) *Lumsden v. Fraser* (1841), 12 Sim. 263; 10 L. J. Ch. 362.

(*b*) *Re Cockcroft* (1883), 24 Ch. D. 94; 52 L. J. Ch. 811; see *Re Fraser*, 1904, 1 Ch. 726; 73 L. J. Ch. 481.

(*c*) *Farrar v. Winterton* (1842), 5 Beav. 1; *Re London Bridge, &c. Act* (1843), 13 Sim. 569.

(*d*) 1 Jarm., 6th ed., 163; *Kuollys v. Shepherd* (1819), cited 1 J. & W. 499.

(*dd*) Dart, 7th ed., 1034.

(*e*) *Pearce v. Bastable's Trustees*, 1901, 2 Ch. 122; 70 L. J. Ch. 446.

## CHAPTER II.

### ABSTRACTS AND SEARCHES.

#### SECT. I.—*Abstracts of title and their verification.*

|                             |  |
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| Commence-<br>ment of title. | IN the absence of stipulation to the contrary, the title on the sale of freeholds and copyholds should be deduced for a period of forty years, that period having been substituted for sixty years by the V. & P. Act, 1874, s. 1 ; nevertheless, where an earlier title than sixty years might have been required under the former practice, an earlier title than forty years may still be required.   |
| Root of title               | A purchase deed, or marriage settlement, is a good instrument with which to commence the abstract. If the title commences  |
| General<br>devise.          | with a general devise contained in the will of a person who died forty years since, then, in the absence of any stipulation to the contrary, proof by old leases, statutory declarations, receipts of rent, parish books, &c., should be supplied that he was in possession of the estate, or in the receipt of the rents and profits thereof, at the time of his death. If the abstract   |
| Appointment<br>under power. | commences with an appointment forty years old, or made the root of title, the deed creating the power need not be abstracted ( <i>b</i> ).   |
| Admittance to<br>copyholds. | As regards copyhold property purchased by the vendor or his predecessor in title forty years ago, the purchase being carried out by a deed of covenant to surrender, a surrender in pursuance of the covenant and an admittance on the surrender, the abstract should commence with these three documents, which in effect constitute one transaction. An abstract of the admittance alone would be imperfect. In like manner, if an admittance took place forty years ago of a devisee under a will, or under a bargain and sale by executors, the title should |

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(*b*) Conv. Act, 1881, s. 3 (3).

commence with the will or bargain and sale, and if the admittance was of an heir, the heirship should be proved. But in each of the above-mentioned cases a special condition that the title should commence with the admittance would be effectual.

Subject to the statutory conditions, the title should be properly commenced, and satisfactorily deduced as to the legal as well as the equitable estate (except where the sale is made under an order of Court which binds the equitable interests), the abstract showing that the vendor is entitled to the lands and the inheritance thereof in fee simple in possession, free from all incumbrances, except such as can be satisfied.

Deduction of title.

A purchaser is not entitled before completion to the production and inspection of deeds, whether in the vendor's possession or not, of earlier date than the deed forming the stipulated or statutory root of title, though he will be entitled to have them handed over to him on completion if they do not relate to other land.

As to right of purchaser to inspect ancient deeds.

If the property is subject to any existing leases, the vendor should, before the sale, allow the purchaser to inspect the counterparts, so that it may be seen that they contain no special provision in favour of the lessee—as, for instance, a right of pre-emption—and that the lessor has entered into no covenant which could prove a burden on the estate in the hands of the purchaser.

Inquiry as to existing leases.

From the document which commences the title, every deed, instrument, incumbrance, and fact, relating to or affecting the title, should be stated in the abstract, except leases which have expired by effluxion of time. Thus, a mortgage deed must be abstracted although the money may have been repaid and the property has been reconveyed. In the case of leaseholds the title can be taken up with an assignment forty years old, the lease being also abstracted.

What abstract should state.

Where there has been an equitable mortgage by memorandum under hand only with deposit of deeds which has been discharged, or is intended to be discharged before completion, it should not be mentioned in the abstract (*d*).

Equitable mortgages not under seal.

Deeds not affecting right to sell need not be abstracted.

Deeds which do not affect and never have affected the right to sell or dispose of the property, though they may confer some beneficial interest in it, need not be abstracted. Thus, where a mortgage is made to persons by one deed and by another it is declared that the mortgagees are trustees for others, the latter need not be abstracted; nor need family charges which are overreached on a sale under the S. L. Acts be abstracted.

Trustee for sale need not usually abstract deed containing trusts of sale money.

If land has been conveyed to a trustee upon an absolute trust for sale, and the trusts of the sale money and of the land until sale are declared by a separate deed, there will be no occasion to abstract the deed declaring the trusts of the money, even though an order has been made by the Court under s. 7 of the S. L. Act, 1884 (*e*), giving leave to some person beneficially interested under the latter deed to exercise the power of sale conferred by s. 63 of the Act of 1882, for the order names (sub-s. ii.) the person who is to exercise the powers, and that (sub-s. ix.) is conclusive. Until such an order is made the trustees may exercise the trusts and powers created by the deed of conveyance to them, without any consent not required by that deed (*f*); and a purchaser may safely deal with them unless he finds a *lis pendens* registered against them (*g*). Sometimes the trusts of the proceeds of sale are by mistake brought on to the title of the land, *e.g.*, by appointing new trustees of the conveyance by the same deed by which trustees are appointed of the settlement; then the settlement must be abstracted.

Writs or orders, *lis pendens*, &c.

Any writ or order for enforcing a judgment or Crown debt, and any *lis pendens* or other incumbrance of the kind affecting the land as against a purchaser, also any certificates of official searches against former owners in the vendor's possession, should be mentioned in the abstract.

Memorandum of registration of deeds.

If the property is in Middlesex or Yorkshire, the abstract

(*e*) See Wolst. Conv. Acts, 9th ed., 437—439.

(*f*) S. L. Act, 1884, s. 6.

(*g*) S. L. Act, 1884, s. 7 (vi.).

should state at the foot of each document the memorandum of registration, with a reference to the year, book, and number.

Where a title is registered under the Land Transfer Acts, 1875 and 1897, a note of the registration will be indorsed on the last purchase deed; a purchaser in this case will arrange to search the register. Registration of title.

Articles before marriage, pursuant to which a settlement has been made, should be abstracted, as well as the settlement itself, to show that the articles were duly carried into effect. As to settlements made in pursuance of articles.

When it is necessary to show the birth, death, or marriage (*gg*) of any person, the fact must be proved either by a recital or statement contained in some deed, instrument, Act of Parliament, or statutory declaration, dated twenty years before the date of the contract (*h*); or by a certified extract from the parochial registers; or from the general register under the Births and Deaths Registration Acts, 1836 to 1901; or from the burial registers established under the Burial Act, 1853, and Registration of Burials Act, 1864 (*i*). Certified extracts from non-parochial registers, which, under the Non-parochial Registers Act, 1840, and the Births and Deaths Registration Act, 1858, are deposited with the Registrar-General, are now made evidence by those Acts (*ii*). Births, &c., proved by certificates.

If a person has not been heard of for seven years, his death will be presumed as between adverse litigants; but there is no such presumption as between vendor and purchaser (*k*). There is no presumption as to the date of death, and the onus of proving it lies on the person who claims a right to the establishment of which the date is essential (*l*). Presumption of death.

When the title, or any portion of it, depends on a claim by descent, the facts supporting the pedigree must be proved, On claim by descent.

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(*gg*) See the Marriage Act, 1898, s. 7.

(*h*) V. & P. Act, 1874, s. 2, r. 2.

(*i*) As to baptisms and burials, see Parochial Registers Act, 1812, ss. 35, 37; also Dart, 7th ed., 386, 387.

(*ii*) See *Re Goodrich*, 1904, P. 138; 73 L. J. P. 33.

(*k*) Sug., 14th ed., 418; Dart, 7th ed., 382, 383.

(*l*) *Re Aldersey*, 1905, 2 Ch. 181; 74 L. J. Ch. 548.

either by recitals or statements in deeds, &c., twenty years old (*m*), or statutory declarations, or by the strict legal evidence of such facts, if it can be procured. If not, extracts from parish books, family Bibles, old books or papers, inscriptions on tombstones, or the declarations of old persons, will often be admissible as proof.

Evidence to be mentioned.

Whatever evidence the vendor has of any matter requiring to be proved should be set out or referred to in the abstract.

Proof of failure of issue (*mm*).

When prior estates are alleged not to have vested for default or failure of issue, the same proof of want of issue must be shown as is required to verify a pedigree.

Proof of wills.

In the case of wills, the abstract is verified by production of the probate, or an office copy, which is now sufficient evidence as to real as well as personal estate (*n*).

Execution of deeds, &c.

It must be seen that every document has been properly executed and attested, and that the proper stamps have been affixed (*mm*). Where enrolment, registration, or acknowledgment is necessary, it must be ascertained that the documents have been properly enrolled, registered, or acknowledged, according to the provisions of the statutes making these formalities necessary.

Receipt for consideration.

When the consideration money is paid at the time, it must be seen that there is a receipt for it either in the body of the deed or indorsed on it (*o*). In the case of a deed dated before 1882, there ought to be a receipt indorsed, but the absence of such a receipt, where there is one in the body of the deed, could hardly be made an objection after this lapse of time. A recital of payment is sufficient evidence without a receipt.

Dower, &c.

It should be seen that the property is not subject to dower, free-bench, or an estate by the curtesy; dower does not now attach except on an intestacy. If there is a tenant by the curtesy he will be the proper person to make title under the S. L. Acts.

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(*m*) V. & P. Act, 1874, s. 2, r. 2.

(*mm*) *Re Jackson*, 1907, 2 Ch. 354; 76 L. J. Ch. 553.

(*n*) Court of Probate Act, 1857, s. 64.

(*mm*) See Stamp Act, 1891; Fin. (1909-10) Act, 1910, s. 4 (3).

(*o*) See Conv. Act, 1881, ss. 54, 55; Wolst. Conv. Acts, 9th ed., 120.

When powers had been exercised it was formerly necessary to ascertain that the needful formalities of execution and attestation had been observed (*q*).

As to due execution of powers.

By the Law of Property Amendment Act, 1859, s. 12, a deed executed after the Act, in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested, is, so far as respects execution and attestation, a valid execution of a power by deed or instrument not testamentary, notwithstanding that some additional or other forms of execution or attestation may have been required.

Execution and attestation of deeds under powers.

With regard to wills, it is provided by the Wills Act, 1837, s. 10, that a will executed as required by the Act shall, as far as respects the execution and attestation thereof, be a valid execution of a power notwithstanding that some additional or other form or solemnity should be required by the instrument creating the power. If a document is invalid as a will it is not a good execution of a power to be exercised in writing and attested by two witnesses (*qq*).

Execution and attestation of testamentary appointments.

An appointment by will valid according to Scots law but unattested by two witnesses is valid though the power prescribes attestation by two witnesses (*r*).

Where property is derived through a married woman, or she is the vendor, it will be desirable to inquire whether any settlement or agreement for a settlement affecting the estate has been executed which has not been noticed in the abstract (*rr*).

Inquiry as to settlements.

By s. 134 of the Bankr. Act, 1883, any document used in the course of any bankruptcy proceedings, if it appears to be sealed with the seal of the Court or purports to be signed by any judge thereof, or is certified as a true copy by any registrar thereof, is receivable in evidence in all legal proceedings whatsoever.

Proceedings in bankruptcy.

(*q*) See *Burdett v. Spilsbury* (1843), 10 Cl. & Fin. 340. As to the equitable remedy in case of defective execution, see Dart, 7th ed., 852, 853.

(*qq*) *Re Barnett*, 1908, 1 Ch. 402; 77 L. J. Ch. 267.

(*r*) *Re Walker*, 1908, 1 Ch. 560; 77 L. J. Ch. 370.

(*rr*) And see M. W. P. Act, 1882, s. 19, and cases thereon in Wolst. Conv. Acts, 9th ed., 306; also M. W. P. Act, 1907, s. 2; also *Walker v. Linom*, 1907, 2 Ch. 104; 76 L. J. Ch. 500.

Identity of  
parcels.

When the description of the parcels has been altered, or they are not sufficiently described in the deeds, proof of identity by leases, parish assessments, receipts for rent, statutory declarations, or other evidence, should be supplied.

Proof of  
enrolled deeds.

Deeds required to be enrolled are sufficiently proved by production of examined copies of the enrolment, but should the originals be in the custody of the vendor, the purchaser would be entitled to their production. Where enrolment is not compulsory the general rule is that their non-production should be accounted for (s).

Land tax.

If the property is sold discharged from land tax, the redemption of that tax is shown by the certificate of the contract, with the receipt of the cashier of the Bank of England, if the consideration for the redemption was stock; or of the Receiver-General for the county, &c., if the consideration was money; and the memorandum of the registration of the contract. A copy of the register, signed by the proper officer, is sufficient evidence of the contract (t).

Proof of  
intestacy.

When an owner of freehold land is stated to have died intestate, the vendor should produce the best evidence of such intestacy in his possession or power. In the absence of special circumstances, the production of the letters of administration taken out to his estate, accompanied (where the death is recent) by a statutory declaration that a will has been searched for and cannot be found, will be regarded as sufficient. If the deceased owner made a will, but died intestate as to the particular property, the will should be mentioned in the abstract, with a statement that it contains no devise or gift of the land in question.

Evidence  
when title  
deeds are  
destroyed.

When the title deeds are lost or destroyed, the vendor must prove the fact of the loss or destruction, and must also furnish the purchaser with the means of showing what were the contents of the destroyed deeds, and of proving that such deeds were duly executed (u). The mere loss is not a fatal defect.

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(s) See Dart, 7th ed., 350—353.

(t) 42 Geo. 3, c. 116, ss. 38, 164, 165; *Buchanan v. Poppleton* (1858), 4 C. B. (N. S.) 20; 27 L. J. C. P. 210. See Fin. Act, 1896, as to the redemption of land tax after the 7th Aug. 1896; also Dart, 7th ed., 393—395.

(u) *Bryant v. Busk* (1827), 4 Russ. 1; *Re Halifax Commercial Bank and Wood* (1898), 79 L. T. 536. See also Dart, 7th ed., 349, 364, n (z).

If any deed was executed by attorney, the power of attorney should be abstracted (*x*) and either the original or office copy (*y*) produced. If the power was created before 1883, proof should be furnished that the donor was living at the time it was acted on. If created since 1882, it must be seen that it was given for valuable consideration and expressed to be irrevocable, or that, whether given for valuable consideration or not, it was expressed to be irrevocable for a fixed time not exceeding one year, and was acted on within that time; otherwise proof that the donor was living will be necessary (*z*).

Execution of deed by attorney.

When the property is leasehold, the lease and all the subsequent assignments should generally be abstracted (*a*); but if the property is held under an ancient lease, it is sufficient to commence the abstract with the lease (*b*), and then to take up the title at a period of forty years from the time of the purchase (*c*). In the absence of stipulation, the purchaser is precluded by the statutory rules from calling for the lessor's title.

Title to leaseholds.

As to copyholds, the abstract should set out the entries on the court rolls relating to the property, and these should be verified by the production of copies signed by the steward. The abstract should also set out all instruments relating to the equitable title.

Copyholds.

When a conditional surrender has been made to a mortgagee, who has not been admitted, it should be shown that satisfaction has been entered up.

Satisfaction of conditional surrender.

On the purchase of copyholds, inquiry should be made as to the customs of the manor, especially as to descent, freebench, fines, heriots, rents, &c., and, in the case of a limitation to a person and the heirs of his body, whether there is any custom to entail. The purchaser should search the court rolls of the manor.

Inquiry as to customs of manor.

(*x*) As to mode of execution, see *Re Airey*, 1897, 1 Ch. 164; 66 L. J. Ch. 152.

(*y*) Conv. Act, 1881, s. 48.

(*z*) Conv. Act, 1882, ss. 8, 9.

(*a*) *Re Stamford, &c. Co. and Knight*, 1900, 1 Ch. 287; 69 L. J. Ch. 127.

(*b*) *Frend v. Buckley* (1870), 5 Q. B. 213; 39 L. J. Q. B. 90.

(*c*) See V. & P. Act, 1874, s. 1; *Williams v. Spargo*, 1893, W. N. 100.

As to Crown  
lands and  
rectories  
impropriate.

In an abstract of title to lands granted by the Crown, or a rectory impropriate, the original grant must precede the deduction of the modern title. The title from the original grantee to the commencement of the modern title need not be produced.

As to advow-  
sons.

The title to an advowson must be traced for one hundred years, and the purchaser must be furnished with a list of the presentations which have taken place during that period, so as to show that the enjoyment has gone with the title (*f*). The requirements of the Benefices Act, 1898, must be complied with.

Evidence of  
private Act.

When the title is derived under a private Act of Parliament, such Act is sufficiently proved by a copy purporting to be printed by the King's printer or under the superintendence or authority of His Majesty's Stationery Office (*g*); but if the vendor has no such copy in his possession the purchaser must pay for it (*h*).

Strips of land  
by a public  
road.

As to open strips of land, which are next a public road, the legal presumption is that they belong to the owner of the adjoining enclosed land, and not to the lord of the manor; but the presumption may be rebutted by the circumstances, *e.g.*, where the strip communicates with open commons or other larger pieces of land (*i*). In a case where for upwards of one hundred years the vestry of a parish had let annually the pasturage of a grass road, the rent being applied for parochial purposes, it was held that a grant to the churchwardens and overseers, as trustees for the inhabitants, might be presumed from the long usage, subject to the public right of way (*k*).

As to life or  
reversionary  
interests in  
trust funds.

On the sale of life or reversionary interests in trust funds, the document creating the trust should be abstracted, and all the clauses therein which relate to, or can in any respect affect, the property should be fully set out (*kk*). If there are any other documents which relate to the interest purchased, they also should be

(*f*) R. P. L. Act, 1833, s. 33; Sug., 14th ed., 367; Dart, 7th ed., 329; Benefices Act, 1898.

(*g*) Evidence Act, 1845, s. 3; Documentary Evidence Act, 1882, s. 2.

(*h*) Conv. Act, 1881, s. 3 (6).

(*i*) Dart, 7th ed., 373; *Plumley v. Lock* (1902), 1 L. G. R. 54.

(*k*) *Haugh v. Wcs't*, 1893, 2 Q. B. 19; 62 L. J. Q. B. 532.

(*kk*) See Withers on Reversions, 4—5.

abstracted, including any deeds by which new trustees have been appointed. The purchaser should ascertain the actual condition and position of the fund at the time of sale, and carefully examine the provisions of the document containing the trust, in order to be satisfied that there is no provision or power under which the capital of the fund may be diminished or otherwise affected. After completion the purchaser will be entitled, like any other *cestui que trust*, to inspect the trust deeds at his own expense. A statutory acknowledgment of the right to production is therefore unnecessary, and could not be required.

On the purchase of life policies, the purchaser, in the absence of a stipulation to the contrary, should be supplied with proof of the correctness of the statements on which the policy was granted, and that the last premium has been paid; and if the policy was effected on the life of any other person than that of the assurer, it will be necessary to ascertain that the assurer had at the time a pecuniary interest in the life of the assured.

As to life policies.

The receipt or certificate for the payment of any succession duty which has become payable in respect of the property during the period covered by the abstract should be noticed in the abstract and produced to the purchaser. It will be borne in mind that when land has been conveyed or devised to trustees on trust for sale, and a sale has been made accordingly, the succession duty payable in respect of the proceeds of the sale is not a charge on the land and need not be noticed; nor need the duty be noticed where the property has been sold by a tenant for life under the Settled Land Acts, or by the personal representatives of a deceased owner, whether under a charge of debts, or under Part I. of the L. T. Act, 1897, or otherwise, unless the claim for duty is paramount to the settlement or to the estate of the deceased.

Succession duty, where evidence of payment should be required.

Sect. 8 of the Fin. Act, 1894, which specifies the persons who are to be accountable for the payment of estate duty, provides, in sub-s. 18, that nothing in that section shall render liable to or accountable for duty a *bonâ fide* purchaser for valuable

Estate duty, when evidence of payment, should be required.

consideration without notice. Whether "without notice" means without notice of a death on which duty may become payable, or notice that the duty remains unpaid, is doubtful. A purchaser, in order to be safe, must assume that the former construction is the correct one, and must require evidence of the payment of the duty in all cases coming within sub-s. 4 of the same section. It is clear that where the property, being leasehold, is sold by the personal representatives of the deceased owner, the purchaser is not liable to see to the payment of the estate duty. It is generally considered that he would not be free from liability where freeholds or copyholds are sold by the personal representatives or trustees under a charge of debts or a trust for sale created by the will of the deceased owner, or by the personal representatives under Part I. of the L. T. Act, 1897; hence the practice in these cases is to require a certificate of payment, under s. 11 of the Act of 1894. In these cases, however, the sale would overreach future duties which have not attached.

Increment  
value duty.

Increment value duty payable on a death is in the same category as estate duty: Fin. (1909-10) Act, 1910, s. 5.

Purchaser of  
reversion  
should require  
death duties  
to be com-  
muted.

When a reversionary estate expectant on death is the subject of sale, the purchaser should require the death duties which will become payable on the death of the tenant for life to be commuted under the statutory provisions in that behalf (*l*).

Estate duty  
on rever-  
sionary  
interests.

Under s. 64 of the Fin. (1909-10) Act, 1910, purchasers and mortgagees of reversionary interests who purchased or took mortgages before the 30th April, 1909, are exempt from the increased death duties imposed by the Act. Where a mortgagor is liable the charge of duty ranks after the mortgagee's security.

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(*l*) S. D. Act, 1853, s. 41; Fin. Act, 1894, ss. 12, 13. A similar requisition should be made on a purchase of the fee simple in land from a life tenant and remainderman unless the sale is made under a power in the settlement or under the S. L. Acts so that the succession duty is shifted to the proceeds of sale; see *Northumberland v. Att.-Gen.*, 1905, A. C. 406; 74 L. J. K. B. 734.

The Customs, &c., Act, 1889, s. 12, and the Fin. Act, 1894, s. 8 (2), taken together, provide in effect that real property shall not, as against a purchaser for valuable consideration (*l*) or a mortgagee, remain charged with or be liable to payment of any sum for estate or succession duty after the expiration of six years from the date of such notice or payment as therein mentioned, or, in the absence of such notice or payment, after the expiration of twelve years from the happening of the event which gave rise to an immediate claim to such duty.

When land ceases to be liable to death duties against purchaser.

A vendor or mortgagor of land, or of any chattels real or personal, or choses in action, conveyed or assigned to a purchaser, or the solicitor or agent of any such vendor or mortgagor, who conceals any settlement, deed, will, or other instrument material to the title or any incumbrance from the purchaser or mortgagee (or falsifies any pedigree upon which the title does or may depend), in order to induce him to accept the title offered or produced to him, with intent in any of such cases to defraud, is guilty of a misdemeanor (*m*).

Penalty for concealing deeds.

Neither a vendor nor his solicitor can be required to answer an inquiry by the purchaser, whether the vendor or his solicitor is aware of any settlement, deed, fact, omission, or incumbrance, affecting the property not disclosed by the abstract (*n*).

What inquiries vendor may refuse to answer.

The abstract is the property of the purchaser if the sale is carried out, but if the contract is abandoned or rescinded he must return it (*o*).

Abstract to be returned if sale not carried out.

## SECT. II.—*The Middlesex and Yorkshire Registries and the Searches to be made therein.*

### *Middlesex Registry.*

By the M. R. Act, 1708, it is provided that a memorial of all deeds, conveyances, and devises of or concerning or whereby any

(*l*) *Re Donelan*, 1902, 1 I. R. 109.

(*m*) Law of Property Amendment Acts, 1859, s. 24; 1860, s. 8.

(*n*) *Re Ford and Hill* (1879), 10 Ch. D. 365; 18 L. J. Ch. 327; *Taylor v. London and Co. Bk.*, 1901, 2 Ch. 231, 258; 70 L. J. Ch. 477.

(*o*) *Roberts v. Wiggatt* (1810), 2 Taunt. 268; see also Dart, 7th ed., 315.

honors, manors, lands, tenements, or hereditaments in the county of Middlesex may be in any way affected in law or equity, may be registered as therein directed, and that every such deed and conveyance shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration unless such memorial thereof shall be registered as by the Act is directed before the registering of the memorial of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim, and that every such devise shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee unless a memorial of such will be registered in such manner as is therein directed (*p*). All memorials of wills that shall be registered within six months after the death of devisors dying in Great Britain, or within three years after the death of devisors dying on the sea or beyond the seas, shall be valid against subsequent purchasers (*q*), and s. 9 extends the time in certain cases.

Exemptions.

The Act does not extend to copyholds, leases at a rack rent, or to any lease, not exceeding twenty-one years, where the actual possession and occupation go along with the lease, or to the City of London, or to any of the chambers in Serjeants' Inn, or to the Inns of Court or Chancery (*r*).

Construction of Acts as to appointment under power.

The following points have been decided with reference to the M. R. Act, 1708, or of similar provisions in the Y. R. Acts, viz.:

(1) That a deed of appointment under a power must be registered (*s*). (2) That the memorial of an assignment of leaseholds will not, by containing a recital of the lease, cure the omission to register the lease (*t*). (3) That an assignment of a legacy charged on land (*u*), or of the proceeds of land devised on trust

Assignment of legacy charged on land.

(*p*) S. 1.

(*q*) S. 8.

(*r*) S. 18.

(*s*) *Scrafton v. Quincey* (1752), 2 Ves. sen. 413.

(*t*) *Honeycomb v. Waldron* (1736), 2 Stra. 1064.

(*u*) *Malcolm v. Charlesworth* (1836), 1 Keen, 63; 5 L. J. Ch. 172.

for sale (*x*), is an assignment of money only, so that such an assignment need not be registered. (4) That an equitable mortgage by agreement in writing, either with or without a deposit of deeds, requires registration (*y*), as also a further charge in favour of a mortgagee who has registered his first mortgage (*z*). (5) That an enfranchisement of copyholds must be registered (*a*). (6) That an order in bankruptcy under s. 121 of the Bankruptcy Act, 1883, whereby the official receiver becomes the trustee in bankruptcy, need not be registered (*b*), though under s. 54 the certificate of appointment of a trustee requires registration. (7) That registration is not requisite as to any interest in land not created by writing, *e.g.*, an equitable mortgage by deposit only or a vendor's lien for unpaid purchase-money, where there is no memorandum (*c*). (8) That a purchaser who buys with actual notice of an unregistered deed is bound by it (*d*). (9) That the registration of a deed is not of itself notice. If, however, a person searches the register he will be deemed to have notice, unless he only searched for a particular period, in which case he will not be deemed to have notice of a deed registered before the commencement of that period (*e*).

Equitable mortgage in writing.

Further charge.

Enfranchisement of copyholds.

Equitable mortgage by deposit and lien for unpaid purchase-money.

Registration of deed not notice.

The M. R. Act, 1708, does not apply to land registered under the L. T. Acts, 1875 and 1897, except estates and interests not covered by the registration, nor to instruments made

Exemptions under L. T. and L. C. Acts.

(*x*) *Arden v. A.* (1885), 29 Ch. D. 702; 54 L. J. Ch. 655.

(*y*) *Moore v. Culverhouse* (1860), 27 Beav. 639; 29 L. J. Ch. 419; *Nere v. Pennell* (1863), 2 Hem. & M. 170; 33 L. J. Ch. 19; *Fullerton v. Prorol. Bk. of Ireland*, 1903, A. C. 309; 72 L. J. P. C. 79.

(*z*) *Credland v. Potter* (1874), 10 Ch. 8; 44 L. J. Ch. 169; *Re Wight's Mortgage Trust* (1873), 16 Eq. 41; 43 L. J. Ch. 66.

(*a*) *R. v. Middlesex Registrar* (1888), 21 Q. B. D. 555; 57 L. J. Q. B. 577.

(*b*) *Re Calcott and Elvin*, 1898, 2 Ch. 460; 67 L. J. Ch. 553.

(*c*) *Sumpter v. Cooper* (1831), 2 B. & Ad. 223; 9 L. J. (O. S.) K. B. 226; *Kettlewell v. Watson* (1884), 26 Ch. D. 501; 53 L. J. Ch. 717.

(*d*) *Le Nere v. Le N.* (1748), 3 Atk. 646, 655; *Wyatt v. Barnwell* (1815), 19 Ves. 435; *Tunstall v. Trappes, Gosling's Case* (1829), 3 Sim. 301 (notice to solicitor).

(*e*) *Hodgson v. Dean* (1825), 2 Sim. & St. 221; affirmed by L. C., July, 1825, MS.; see Sug., 14th ed., 761.

after the 30th July, 1900, and capable of registration under the Land Charges, &c., Act, 1888, or the Land Charges Act, 1900.

Middlesex  
Registry  
transferred to  
office of Land  
Registry.

Memorials and  
searches.

Under the L. R. (Middx. Deeds) Act, 1891, the Middlesex Registry has been transferred to the office of Land Registry.

The First Schedule to the Act of 1891 and the Land Registry (Middlesex Deeds) Rules, 1892, prescribe regulations as to memorials and searches. An official search may be required, and in that case an official certificate of the result of the search will be given to the applicant. Such certificate exonerates the applicant from all loss that may arise from any error therein, and when obtained by a solicitor acting for trustees, executors, or other persons in a fiduciary position those persons are also exonerated. Forms of memorials of requisitions for search and of certificates of result of search are prescribed by the rules.

### *Yorkshire Registries.*

Summary of  
Y. R. Acts.

The Yorkshire Registries Act, 1884, which came into operation on the 1st January, 1885, repeals the former Y. R. Acts. The following is a summary of its principal provisions as amended by the Y. R. Act Amendment Act, 1884, and the Y. R. Amendment Act, 1885.

Assurances  
and wills to  
be registered.

1. Assurances made, and the wills of testators dying after the commencement of the Act, by which lands in Yorkshire are affected, may be registered (*f*).

Mode of regis-  
tration.

2. Registration may be effected by enrolling in the register a memorial, or, at the option of the person registering, a full copy of the assurance or will (*g*).

Definition of  
"assurance."

3. Assurance includes any conveyance, enlargement of term into fee simple, memorandum of charge, deed of consent to the discharge of a trustee, statutory receipt, private Act of Parliament, award or order of the Land Commissioners (now the Board of Agriculture and Fisheries), order of a Court, certificate of

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(*f*) Act of 1884, s. 4.

(*g*) S. 5.

appointment of trustee in bankruptcy, or affidavit of vesting under any Act of Parliament (*h*).

4. A caveat may be registered by any person claiming an interest in land, to be in force for the period specified therein ; and if within that period a conveyance is executed and registered in favour of the person registering the caveat, it will be deemed to have been registered on the day on which the caveat was registered (*i*).

Caveats may be registered.

5. Every assurance entitled to be registered is to have priority according to the date of registration, and every will according to the date of the testator's death if the date of registration is within six months after the death, but if not then according to the date of registration. This priority is to have full effect, except in cases of actual fraud, and no person claiming under a registered instrument is to lose priority merely in consequence of his having been affected with actual or constructive notice, except in cases of actual fraud. But this provision is not to confer on a person claiming without valuable consideration any further priority than would belong to the person under whom he claims (*k*).

Assurances to rank according to date of registration.

Wills according to date of death, if registered within six months ; if not, according to date of registration.

Priority not affected by notice.

6. If a person interested under a will cannot register it within six months after the testator's death, he may register notice of it, and in that case, if the will is duly registered within two years after the death of the testator, it will have priority as though it had been registered upon the date on which the notice was registered, and such last-mentioned date is for all purposes to be deemed to be the date of the registration of the will (*l*).

Notice of will may be registered in certain cases, and will itself be registered afterwards.

(*h*) Act of 1884, s. 3. An agreement for sale is not an assurance within the definition in the Act : *Rodger v. Harrison*, 1893, 1 Q. B. 161 ; 62 L. J. Q. B. 213.

(*i*) Act of 1885, s. 3.

(*k*) Act of 1884, s. 14 ; 52 Sol. J. 168, 189. Registration would be no protection against a document or unwritten equity not entitled to or capable of being registered, of which the purchaser had notice ; see *White v. Neaylon* (1886), 11 A. C. 171 ; 55 L. J. P. C. 25 ; *Battison v. Hobson*, 1896, 2 Ch. 403 ; 65 L. J. Ch. 695. An assignment for the benefit of creditors only passes such interest as the bankrupt had in his property, hence takes effect subject to equitable incumbrances executed before but registered after the assignment : *Jones v. Barker*, 1909, 1 Ch. 321 ; 78 L. J. Ch. 167.

(*l*) Act of 1884, s. 11.

Heir may register affidavit of intestacy.

7. An heir may register an affidavit that he believes his ancestor to have died intestate, and in that case an assurance for valuable consideration by the heir duly registered is to have priority over any will of the supposed intestate, registered after the assurance, and after six months from the testator's death (*m*).

Lien for unpaid purchase-money, and charge by deposit of deeds, to be registered.

8. A lien for unpaid purchase-money, or a charge by deposit of title deeds, will have no priority against a subsequently registered assurance for valuable consideration, unless and until a memorandum thereof is registered (*n*).

Official searches.

9. Provision is made for official searches, and a record of the result of every such search is to be preserved at the office, and the registrar is to give a certificate of such result to any person requiring the same, and every such certificate is to be receivable in evidence (*o*).

Searches may be made and copies taken by any person.

10. Any person is authorised on application to inspect and search the register and any other books and indices which may be required to be kept at the register office under the Act or any rules made thereunder, and to take copies thereof or extracts therefrom (*p*).

Protection of solicitors, trustees, &c., in the case of certificates, &c.

11. Where any solicitor, trustee, executor, agent, or other person in a fiduciary position, either by himself or by a solicitor, obtains a certificate of the result of an official search, or a certified copy of any document enrolled in the register, or of any entry therein or any book or index kept at the office, he is not to be answerable for any loss, damage, or injury arising from any error therein (*q*).

Protection by legal estate and tacking not to be allowed.

12. In any case in which priority or protection might, but for the Act, have been given or allowed to any estate in lands, by reason of such estate being protected by or tacked to any legal

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(*m*) Act of 1884, s. 12 ; but see now L. T. Act, 1897, s. 1.

(*n*) S. 7.

(*o*) Ss. 20, 21.

(*p*) S. 19.

(*q*) S. 23.

or other estate, no such priority or protection is in future to be so given or allowed, and full effect is to be given to this provision although the party claiming such priority or protection may be a purchaser for valuable consideration without notice (*r*).

13. The Act does not apply to copyholds, or to any lease not exceeding twenty-one years, or any assignment thereof where accompanied by actual possession from the making of such lease or assignment (*s*), or to land registered under the L. T. Acts, except estates and interests not covered by the registration (*t*). Exemptions.

The practice as to registration and enrolment of instruments, and as to searches for registered or enrolled instruments, under this Act is regulated by rules passed by the Justices of the Peace for the several Ridings at Quarter Sessions (*u*). Rules under the Yorkshire Registries Act.

*As to Middlesex and Yorkshire Registries.*

A purchaser of land in Middlesex or Yorkshire (not being land registered under the L. T. Acts) should search or require an official search to be made in the local registry in the names of all persons whose interest in the property, as disclosed by the abstract, is or has been such that a registered assurance by him would prejudicially affect the present title, and in strictness the search should extend over the whole period covered by the abstract (*y*). The search will be against each successive owner from the date of the conveyance to him to the date of the registration of the instrument by which he parted with his interest. It should be continued For what period.

(*r*) S. 16.

(*s*) S. 28.

(*t*) L. T. Act, 1875, s. 127; L. T. Act, 1897 (First Schedule).

(*u*) See the North Riding of Yorkshire Registry Rules, 1885. Those passed for the East and West Ridings are identical, *mutatis mutandis*.

(*y*) Sometimes the entries against one name are so numerous as to make a search impracticable without incurring a very heavy expense, and in such a case the solicitor should obtain an authority from his client to forego a search. In practice these searches are seldom made further back than the last purchase for value. The extent of the search is a matter to be considered in each case. Search sometimes impracticable.

against a testator or intestate after his death, and against his representative or devisee or heir to the date of the registration of the conveyance by one of them. A search need not be made against a mortgagor after the date of the mortgage deed, if the mortgagee is selling under his power of sale. Searches may sometimes be necessary against persons having a power to appoint new trustees (*z*). If on a search any document affecting the property is found which is not abstracted, an abstract of it should be called for.

Right of purchaser to require registration.

The purchaser should also see that all documents requiring registration have been duly registered; and if it appears that any document has not been registered, he must determine whether, having regard to the subsequent dealings with the property, the want of registration prejudicially affects his title, and if it does, he should require the vendor to register it at his own expense. The purchaser must pay for the registration of his own conveyance.

Registered conveyance by devisee under unregistered will prevails over subsequently registered conveyance by heir.

The V. & P. Act, 1874, s. 8, provides that where the will of a testator devising land in Middlesex or Yorkshire has not been registered within the period allowed by law in that behalf, an assurance of such land to a purchaser or mortgagee by the devisee or by some one deriving title under him shall, if registered before, take precedence over any assurance from the testator's heir-at-law.

Whether on a purchase of land in Middlesex from the devisee under a will, where the six months have expired without registration, the purchaser should require registration, though he satisfies himself by search that there is no registered assurance by the heir, is a moot point (*u*). As regards land in Yorkshire, it is conceived that the above enactment is no longer in force, but has been superseded by the Y. R. Acts, 1884 and 1885.

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(*z*) See T. Act, 1893, s. 12 (4).

(*u*) Dart, 7th ed., 702.

Under the old Yorkshire Registry Acts, it was held that if a will was not registered within the prescribed time, and the heir made a conveyance to a purchaser for valuable consideration without notice which was registered, and afterwards a will was discovered and registered, the conveyance by the heir prevailed over the will (*b*). It is apprehended that under the Y. R. Act, 1884, s. 12, the heir must register an affidavit of intestacy, and that, until this is done, the purchaser cannot safely take a conveyance from him. Where the death occurs after 1897, the land will vest in the personal representative (*c*), and the heir cannot convey till the land has been conveyed to him.

Conveyance by heir when good against title under unregistered will.

SECT. III.—*Judgments, Crown Debts, Lis pendens, Annuities, Deeds of Arrangement, and Land Charges, as affecting Land, and the Searches to be made in respect of them, and other Searches and Inquiries.*

*The old Law as to Judgments.*

The remedy of the judgment creditor against his debtor's lands has its origin in the Statute of Westminster the Second. That Act enabled him to elect either to have a writ of *fieri facias* against the debtor's goods or that the sheriff should deliver to him "all the chattels of the debtor (saving only his oxen and beasts of the plough (*d*)) and the one-half (*e*) of his lands, until the debt be levied upon a reasonable price and extent." Hence the writ was, and still is, called a writ of *elegit*.

Remedy by *elegit* first granted by 13 Edw. I, c. 18.

The term "lands" in the statute included rent-charges, impropriate rectories and tithes (*f*), and land in reversion

What could be taken by *elegit* under the old law.

(*b*) *Chadwick v. Turner* (1866), 1 Ch. 310; 35 L. J. Ch. 319.

(*c*) L. T. Act, 1897, ss. 1 and 3.

(*d*) The words "all" &c. to "plough" are repealed by the Bankruptcy Act, 1883, s. 169, Fifth Schedule. See also s. 146, which expressly provides that a writ of *elegit* shall not extend to goods.

(*e*) Extended to the whole of the land by the Judgments Act, 1838, s. 11.

(*f*) Co. Lit. 159.

expectant on a lease reserving a rent (*g*). Copyholds (*h*), however, could not be extended, nor an advowson in gross (*i*), nor an estate tail, so as to affect the issue (*k*).

From what time judgment operated as a lien on lands.

A judgment was a general lien on the debtor's extendible freehold lands from the date of its being entered up, but chattels real were only bound from the time when the writ of execution was lodged with the sheriff. And if the debtor had a general power of appointment over land, and also an estate in the same land in default of and until appointment, the lien of the judgment upon the estate was liable to be defeated by a subsequent exercise of the power (*l*), even though the appointee had notice of the judgment (*m*).

Right of execution extended by Statute of Frauds to land vested in a trustee.

Under s. 10 of the Statute of Frauds, execution might be had of land vested in a trustee for the debtor, provided that the trustee remained seised at the time of execution sued; but this section only applied where the trustee held on a simple trust for the debtor, and did not extend to an equity of redemption (*n*) or any equitable interest short of the absolute beneficial ownership (*o*). As regards equitable interests of this kind, the remedy of the creditor was to take proceedings in the Court of Chancery to have the legal impediment removed, *e.g.*, in the case of an equity of redemption, by redeeming the mortgage, and to obtain in the meantime, by the appointment of a receiver, the same benefit which he would have had at law under an *elegit*, if the legal impediment had not existed. But it was necessary under the old law that the creditor should, before filing his bill, sue out an *elegit* (*p*).

Equity of redemption, &c., could be reached through Court of Chancery by appointment of receiver.

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(*g*) 1 Roll. Ab. 894.

(*h*) *Heydon's Case* (1584), 3 Co. Rep. 7a.

(*i*) 3 Bac. Ab. 382.

(*k*) *Ashburnham v. St. John* (1605), Cro. Jac. 85.

(*l*) *Doe v. Jones* (1830), 10 B. & C. 459; 8 L. J. (O. S.) K. B. 214.

(*m*) *Eaton v. Sanster* (1834), 6 Sim. 517; 3 L. J. Ch. 197.

(*n*) *Burden v. Kennely* (1757), 3 Atk. 739.

(*o*) *Harris v. Booker* (1827), 4 Bing. 96; 5 L. J. (O. S.) C. P. 92.

(*p*) *Neate v. Marlborough* (1838), 3 My. & C. 407.

*The Act of 1838 and subsequent Acts as to Judgments.*

By the Judgments Act, 1838, s. 11, as modified by the Acts of 1839 and 1840, the remedy by elegit was extended to "all such lands, tenements, rectories, tithes, rents, and hereditaments (including lands and hereditaments of copyhold or customary tenure) as the person against whom execution is so sued, or any person in trust for him, shall have been seised or possessed of at the time of entering up the said judgment, or at any time afterwards, or over which such person shall at the time of entering up such judgment, or at any time afterwards, have any disposing power which he might without the assent of any other person exercise for his own benefit." And by s. 13 a judgment was made a charge on "all lands, tenements, rectories, advowsons, tithes, rents, and hereditaments (including lands and hereditaments of copyhold or customary tenure) of or to which such person shall at the time of entering up such judgment, or at any time afterwards, be seised, possessed, or entitled for any estate or interest whatever, at law or in equity, whether in possession, reversion, remainder, or expectancy, or over which such person shall at the time of entering up such judgment, or at any time afterwards, have any disposing power, which he might, without the assent of any other person, exercise for his own benefit," and the judgment is declared to be binding as against the debtor and all persons claiming under him, and also against the issue of his body, and all other persons whom he might, without the assent of any other person, cut off and debar from any remainder, reversion, or other interest (*q*). But a judgment creditor is not entitled to proceed in equity to obtain the benefit of the charge until after the expiration of a year from the time of entering up the judgment.

1 & 2 Vict.  
c. 110.  
Remedy by  
elegit extended  
to entirety of  
lands, &c.

Judgment an  
equitable  
charge.

By the Land Charges, &c. Act, 1888, s. 5, it is provided that every writ or order affecting land issued or made by any Court

51 & 52 Vict.  
c. 51.  
Writs of exe-  
cution may be  
registered in  
office of Land  
Registry,

(*q*) See *Re Anthony*, 1893, 3 Ch. 498; 62 L. J. Ch. 1004, as to the effect of the death of a tenant in tail in possession of copyholds whose land had before his death been delivered in execution under a writ of elegit, in the belief that he was seised in fee simple.

and registration renewed every five years.

Writ, unless registered, to be void against purchaser for value.

63 & 64 Vict. c. 26.

No judgment to operate as a charge on land until registration of writ or order.

37 & 38 Vict. c. 57.

Right to recover judgment debt, when barred.

for the purpose of enforcing any judgment, statute, or recognizance, and any order appointing a receiver or sequestrator of land, may be registered in the Land Registry in the name of the person whose land is affected. The registration is to cease to have effect at the end of five years, but may be renewed from time to time, and if renewed will have effect for five years from the date of the renewal. And s. 6 provides that every such writ and order, and every delivery in execution or other proceeding taken in pursuance of any such writ or order, shall be void against a purchaser for value unless and until the writ or order is registered under the Act.

By the Land Charges Act, 1900, which came into operation on the 1st July, 1901, it is provided that a judgment, whether obtained or entered into before or after the commencement of the Act, shall not operate as a charge on land unless and until a writ or order for the purpose of enforcing it is registered under sect. 5 of the Act of 1888.

By the R. P. Lim. Act, 1874, s. 8, the right to recover any sum of money secured by a judgment, &c., is barred at the end of twelve years next after a present right to receive the same (*qq*) has accrued to some person capable of giving a discharge for the same, unless in the meantime there has been part payment of principal or interest or an acknowledgment of the right thereto given in writing signed by the person by whom the same is payable or his agent. This enactment extends to judgments generally, and is not restricted to those which operate as charges upon land (*r*).

### *The present Law of Judgments.*

Summary of present law.

The present state of the law, as the result of the legislation above referred to and of judicial decision, is summarised in the following paragraphs.

(*qq*) See *Re Pardoe*, 1906, 2 Ch. 340; 75 L. J. Ch. 748.

(*r*) *Hibbithwaite v. Peever*, 1892, 1 Q. B. 124; *Jay v. Johnstone*, 1893, 1 Q. B. 25, 189; 62 L. J. Q. B. 128; *Taylor v. Holland*, 1902, 1 K. B. 676; 71 L. J. K. B. 278.

1. Judgments (which term includes all judgments, decrees, and rules or orders of Courts of law or equity whereby any sum of money or any costs, charges, or expenses are made payable to any person (s)) are enforceable against the debtor's lands, or such of them as are of an extendible nature, by means of a writ of *elegit*.

Judgments enforceable against land by *elegit*.

2. The process of execution on a writ of *elegit* is as follows:— The writ is placed in the hands of the sheriff of the county, who thereupon holds an inquisition before a jury to inquire what the lands are, and, having ascertained this, he makes a return to the writ, stating that he has delivered the lands (specifying them) to the creditor, and the inquisition and writ are then filed in the Land Registry. The effect is to vest the land in the creditor, to hold to him and his assigns until the debt and interest shall have been levied. He can then bring an action of ejectment if the land is in possession, or if in reversion may sue for the rent (t).

Process on an *elegit*.

Nature of creditor's estate under an *elegit*.

3. Every legal estate or interest in land in possession or reversion, if vested in the debtor beneficially, or if he has a power of disposition over it exercisable for his own benefit, is extendible at law. So also is land vested in a trustee on a bare trust for the debtor, where the debtor has the whole beneficial interest. So also are impropriate rectories and tithes, but not a rectory or tithe constituting an ecclesiastical benefice (u), nor an advowson in gross, nor an estate in remainder (x). Where the legal estate of the debtor is subject to any equity, the judgment creditor will take subject to that equity; in other words, will take whatever beneficial interest the debtor has, and no more (y).

What property may be taken on an *elegit* (tt).

(s) Judg. Act, 1838, s. 18.

(t) As to the effect of an *elegit* against a lessee for years who has subdemised by way of mortgage, see *Johns v. Pink*, 1900, 1 Ch. 296; 69 L. J. Ch. 98.

(tt) See Carson, 2nd ed., 488-90, where all the recent cases are collected.

(u) *Hawkins v. Gathercole* (1855), 6 D. M. & G. 1; 24 L. J. Ch. 332; *Bates v. Brothers* (1854), 2 Sm. & G. 509; 23 L. J. Ch. 782.

(x) *Re South* (1874), 9 Ch. 369; 43 L. J. Ch. 441.

(y) *Whitworth v. Gaugain* (1846), 1 Ph. 728; 15 L. J. Ch. 433; *Kinderley v. Jervis* (1856), 22 Beav. 1; 25 L. J. Ch. 538.

And a voluntary settlement by the debtor is not avoided by a subsequent judgment (z).

Equitable  
execution.

4. When the debtor's interest consists of an equity of redemption, or any other equitable interest not extendible at law, but which if it had been a legal estate would have been so extendible, the Court will, at the suit of the creditor, appoint a receiver; and an order for the appointment of a receiver gives the creditor a remedy analogous to that of a legal execution, and is therefore commonly, though somewhat incorrectly, called "equitable execution" (a). A receiver may be appointed in the original action and in whatever branch of the Court it may have been instituted (b); nor is it necessary to sue out a writ of *elegit* first, as was formerly the rule (c). But the Judicature Act does not give jurisdiction to appoint a receiver by way of "equitable execution" in cases where, prior to that Act, no Court had such jurisdiction (d).

As to all judg-  
ments after  
1st July, 1901.

5. Since the 1st July, 1901, a judgment, whether obtained before or after that date, becomes a charge on the debtor's interest in land, when (and not before) a writ or order for the purpose of enforcing it is registered under s. 5 of the Act of 1888 (e).

Re-registra-  
tion.

6. Registration of a writ or order ceases to have effect at the expiration of five years, but may be renewed from time to time, and, if renewed, has effect for five years from the date of the renewal (f).

Sale.

7. A creditor to whom any land of a debtor has been delivered

(z) *Beavan v. Oxford* (1856), 6 D. M. & G. 507; 25 L. J. Ch. 299. See now Voluntary Conveyances Act, 1893.

(a) *Atkins v. Shephard* (1889), 43 Ch. D. 131; 59 L. J. Ch. 83; *Cadogan v. Lyric Theatre*, 1894, 3 Ch. 338; 63 L. J. Ch. 775.

(b) *Smith v. Cowell* (1880), 6 Q. B. D. 75; 50 L. J. Q. B. 38.

(c) *Ex parte Evans* (1879), 13 Ch. D. 252; 49 L. J. Bk. 7.

(d) *Harris v. Beauchamp Brothers*, 1894, 1 Q. B. 801; 63 L. J. Q. B. 480; see also *Thompson v. Gill*, 1903, 1 K. B. 760, 766; 72 L. J. K. B. 411; *Edwards & Co. v. Picard*, 1909, 2 K. B. 903; 78 L. J. K. B. 1108.

(e) Land Charges Act, 1900, s. 2.

(f) Land Charges, &c. Act, 1888, s. 5 (3); and see S. L. Act, 1890, s. 19.

in execution may obtain from the Court an order for the sale of the debtor's land (*g*).

8. Where there are two judgment creditors, A. and B., and A. takes the land in execution, B.'s position seems to be as follows: he may, as heretofore, take proceedings in equity to remove the impediment caused by A.'s *elegit*, *e.g.*, by redeeming him (*h*), and if A., before being redeemed, obtains an order of sale, B. will be entitled to share in the surplus proceeds of the sale after A.'s claim is satisfied.

Position of other judgment creditors, where execution has been obtained by one.

9. If land is delivered in execution, and the writ or order is duly registered, after the debtor has contracted to sell it, but before the purchase is completed, the judgment creditor will take subject to the contract; but he would be entitled to be paid out of the purchase-money, and the purchaser cannot safely pay the money to the vendor (*i*).

Execution after contract of sale.

10. As an estate in remainder expectant on a life estate cannot be taken in execution either legal or equitable, there could be no charge on the land, while s. 1 of the Judgments Act, 1864, remained in force, until the debtor's estate fell into possession (*k*). But that section has been repealed as from the 1st July, 1901, and as under the Land Charges Act, 1900, s. 2, the judgment will become a charge on the registration of the writ or order for enforcing it, the question arises whether, if the creditor sues out and registers a writ of *elegit*, he will not thereby acquire a charge under s. 13 of the Judgments Act, 1838, although the sheriff may afterwards return to the writ that there is no land capable at present of being taken in execution. It is also a question whether the creditor might not, while the debtor's estate is reversionary, obtain and register an order for the appointment of a receiver to receive the rents when

Position of judgment creditor, where debtor has estate in remainder.

(*g*) Judgments Act, 1864, s. 4, as altered by the Land Charges Act, 1900, Schedule. It would seem that the writ should be registered: Dart, 7th ed., 1217.

(*h*) *Re Cowbridge Ry. Co.* (1868), 5 Eq. 413; 37 L. J. Ch. 306.

(*i*) *Thornton v. Finch* (1864), 4 Giff. 515; 34 L. J. Ch. 466.

(*k*) *Re Harrison and Bottomley*, 1899, 1 Ch. 465; 68 L. J. Ch. 208.

the estate falls into possession (*l*), and thereby acquire a charge.

*Crown Debts (ll).*

Crown debts upon record or by specialty enforceable by extent against freehold and leasehold property, but not against copyholds.

Debts due to the Crown upon record or by specialty (*m*) may be enforced by a writ of extent against all freehold property belonging to the debtor at the time when the debt becomes one of record or the specialty debt is contracted, or at any time afterwards, including equities of redemption and other equitable interests, rents, and inappropriate tithes. If the debtor dies before an extent is issued, the lands may be taken in the hands of his heir or issue in tail (*n*), the writ in that case being called a writ of *diem clausit extremum*. Copyholds are not extendible by Crown process, and chattels real are only bound from the *teste* of the extent.

Crown debts cannot be defeated by execution of power.

Crown debts cannot be defeated by the execution of a power (*o*); but the Crown is bound by all interests actually created before the lien of the Crown has attached, and this would include an equitable mortgage by deposit of the title deeds (*p*).

Simple contract debt to Crown.

A simple contract debt to the Crown is no charge on the debtor's land, until it becomes one of record.

Accountants to the Crown.

An accountant to the Crown is by the Act 13 Eliz. c. 4 placed in the same position as the debtor to the Crown by specialty.

Crown judgments now on same footing as others.

The Judgments Act, 1839, and the Crown Suits, &c. Act, 1865, contained provisions for the registration and re-registration of Crown debts and executions, but these enactments have been repealed as from the 1st July, 1901. By the Land Charges Act, 1900, a Crown debt or judgment, whenever dated, is placed on the same footing as other judgments, and must be registered at the Land Registry. Until registered it does not become a charge

(*l*) See observations of Lindley, L.J., in *Re Harrison and Bottomley*, *sup.*

(*ll*) See Goodeve, R. P., 5th ed., 380.

(*m*) 33 Hen. 8, c. 39, s. 36.

(*n*) 33 Hen. 8, c. 39, s. 52; *Anderson's Case* (1597), 7 Co. Rep. 21 a.

(*o*) *R. v. Ellis* (1850), 6 Exch. 921; 20 L. J. Ex. 348.

(*p*) *Casberd v. Att.-Gen.* (1819), 6 Price, 411.

on the land. It can only be registered in the Central Office under an order of the Court (*q*).

A debt to the Crown has priority in the administration of assets over other debts, but formerly not over those of a higher degree; and in a case where the assets were more than sufficient to pay a simple contract debt to the Crown, it was held that the assets ought to be apportioned between the specialty and simple contract debts, and the Crown debt taken only out of the amount apportioned to the latter (*r*). This seems to be incorrect (*rr*). Crown debt has priority over other debts.

It may now be necessary to search at the Land Registry against the Crown for debts arising from the new duties on land values imposed by the Fin. (1909-10) Act, 1910. Increment value duty, undeveloped land duty, and mineral rights duty are Crown debts, and reversion duty is a Crown debt in respect of which the Crown ranks *pari passu* with other creditors (*s*). Duties on land values

### *Lis pendens.*

A person who purchases land during the pendency of a suit relating to the subject of his purchase is bound by the order that may be made against the person through whom he derives title, whether he has notice of the pending proceedings or not (*t*); in other words, neither party to a litigation can alienate the property in dispute so as to affect his opponent. The doctrine of *lis pendens* is founded, not upon any peculiar principles of a Court of equity as to implied or constructive notice, but is common to Courts both of law and equity, and rests upon this foundation, that it would be impossible that any action or suit could be brought to a successful termination if alienations *pendente lite* were permitted to prevail. *Lis pendens* : what it is.

With regard to the application of the doctrine, it should be Suit must be pending.

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(*q*) Land Charges Act, 1900, s. 2 (3).

(*r*) *Re Bentinck*, 1897, 1 Ch. 673; 66 L. J. Ch. 359.

(*rr*) *Re Sampson*, 1906, 2 Ch. 584; 76 L. J. Ch. 21; no apportionment of assets is required between the specialty and simple creditors.

(*s*) See ss. 4 (4), 15 (1), 19, and 20 (4); 54 Sol. J. 800.

(*t*) *Bp. of Winchester v. Paine* (1805), 11 Ves. 194.

borne in mind, first, that the suit must be *pending*, for there is no such doctrine as that a decree of a Court is to be deemed implied notice to a purchaser after the cause is ended; and, secondly, that the purchaser is only bound by rights ascertained in the suit affecting the estate itself which he purchases (*u*).

Purchaser only bound by rights affecting the estate itself.

How far administration decree affects executor's powers.

If an action is instituted for the administration of the estate of a deceased person, the executor can sell and make a good title to leasehold property, and, where the testator has died since 1897, to freehold land also, at any time before judgment, nor will a judgment prevent his selling unless a sale by the Court is ordered, or a receiver appointed] or an injunction granted to restrain him (*x*).

Effect of decree for execution of trusts.

If an action is instituted for the execution of the trusts of a deed or will, the trustees can act in the exercise of their powers up to the time of the decree, but must afterwards act under the direction of the Court (*y*).

Powers of tenant for life under S. L. Acts not affected.

A decree for the execution of the trusts of a settlement does not prevent a tenant for life from exercising the power of sale or other powers conferred on him by the S. L. Acts (*z*).

Notice of *lis pendens*.

A *lis pendens* is not necessarily an incumbrance. If the claim in respect of which the action is instituted is unsustainable, a purchaser cannot refuse to complete on that account (*a*).

*Lis pendens* must be registered.

The Judgments Act, 1839, s. 7, provides that no *lis pendens* shall bind a purchaser or mortgagee without express notice thereof, unless and until registered and re-registered in manner therein provided. The re-registration must be every five years.

Order under S. L. Act, 1884.

An order made under s. 7 of the S. L. Act, 1884, is directed

(*u*) *Kinsman v. K.* (1831), 1 Russ. & M. 617; *Bellamy v. Sabine* (1857), 1 De G. & J. 566; 26 L. J. Ch. 797.

(*x*) *Price v. P.* (1887), 35 Ch. D. 297, 301; 56 L. J. Ch. 530; L. T. Act, 1897.

(*y*) *Cafe v. Bent* (1843), 3 Haro, 245; 13 L. J. Ch. 169; *Walker v. Smalwood* (1768), Amb. 676.

(*z*) *Cardigan v. Curzon-Howe* (1885), 30 Ch. D. 531; 55 L. J. Ch. 71; *Hampden v. Earl of Buckinghamshire*, 1893, 2 Ch. 531; 62 L. J. Ch. 643.

(*a*) *Bull v. Hutchens* (1863), 32 Beav. 615.

to be registered and re-registered as a *lis pendens* against the trustees of the settlement, and does not affect persons dealing with the trustees unless registered.

The doctrine of *lis pendens* does not apply to personal property other than chattel interests in land (*b*).

*Lis pendens* does not apply to personal chattels.

### *Annuities.*

By the Judgments Act, 1855, s. 12, it is provided that any annuity or rent-charge granted after the passing of the Act, otherwise than by marriage settlement, for one or more life or lives, or for any term of years or greater estate determinable on a life or lives, shall not affect any lands, &c., as to purchasers, mortgagees, or creditors, unless and until registered in the Common Pleas (now the office of Land Registry) in manner therein provided; but, by s. 14, annuities or rent-charges given by will are excepted.

As to registration of annuities. 18 & 19 Vict. c. 15.

An unregistered annuity is good against subsequent purchasers with notice, and against trustees in bankruptcy and judgment creditors, whether they have notice of it or not (*c*).

Unregistered annuity good against subsequent purchasers with notice.

### *Deeds of Arrangement.*

Deeds of arrangement between a debtor and his creditors are required by the Deeds of Arrangement Act, 1887, to be registered in the Bills of Sale Department of the Central Office of the Supreme Court, and if not so registered are void (*d*).

Deeds of arrangement must be registered in Central Office, 50 & 51 Vict. c. 57,

The Land Charges, &c. Act, 1888 (ss. 7 to 9), directs that there shall be kept at the office of Land Registry a register of deeds of arrangement affecting land. In this register a deed of arrangement may be registered in the name of the debtor on the application of a trustee of the deed, or of a creditor, assenting to or taking the benefit of the deed. And it is provided that

and also (as against purchasers) at office of Land Registry.

(*b*) *Wigram v. Buckley*, 1894, 3 Ch. 483; 63 L. J. Ch. 689.

(*c*) *Greaves v. Toftield* (1880), 14 Ch. D. 563; 50 L. J. Ch. 118.

(*d*) *Hedges v. Preston* (1899), 80 L. T. 847; *secus* in the case of named creditors: *Re Saumarez*, 1907, 2 K. B. 170; 76 L. J. K. B. 828. This Act does not apply to arrangements made by limited companies: *Re Rileys*, 1903, 2 Ch. 590; 72 L. J. Ch. 678.

every deed of arrangement, whether made before or after the commencement of the Act, shall be void as against a person who, after the commencement of the Act, becomes a purchaser for value of any land comprised therein, or affected thereby, unless such deed is registered as above.

Result of enactments.

The result of the above enactments is, that a deed of arrangement is absolutely void unless registered in the Central Office, and is void against a purchaser for value of land unless it is also registered in the Land Registry. There is no provision for re-registration.

### *Land Charges.*

Register of land charges.

Besides the register above mentioned, the Land Charges, &c. Act, 1888, s. 10, directs that there shall be kept at the Land Registry a register of "land charges," which term is defined (sect. 4) to mean a rent or annuity or principal money payable by instalments or otherwise, with or without interest charged, otherwise than by deed, upon land, under the provisions of any Act of Parliament, for securing to any person either the money spent by him or the costs, charges, and expenses incurred by him under such Act, or the money advanced by him for repaying the money spent, or the costs, charges, and expenses incurred by another person under the authority of an Act of Parliament<sup>(c)</sup>, and a charge under s. 35 of the Land Drainage Act, 1861, or ss. 15<sup>(cc)</sup> and 19<sup>(x)</sup> of the Agr. H. Act, 1908, but does not include a rate or scot.

Land charges, how to be registered.

Any land charge, as above defined, may be registered in the register of land charges, in the case of freehold land in the name of the person beneficially entitled to the first estate of freehold, and in the case of copyhold land in the name of the tenant on the court rolls at the time of the creation of the land charge. Where the person by whom the application was made,

(c) The terminable rent-charges created under the Improvement of Land Act, 1864, come within this definition.

(cc) Which replaced s. 29 of the Agr. H. Act, 1883.

(x) Which replaced s. 3 (4) of the Agr. H. Act, 1900; and see Wolst. Conv. Acts, 9th ed., 193.

pursuant to which the land charge was created, was beneficially entitled to a lease for lives, or a life at a rent or to a term of years, the land charge is to be registered also in the name of that person (*f*).

A land charge created after the commencement of the Act is void against a purchaser for value unless registered (*g*), and after the expiration of one year from the first assignment by act *inter viros* occurring after the commencement of the Act of a land charge created before that date, the person entitled thereto will not be able to recover it against a purchaser for value unless it is registered before the completion of the purchase (*h*).

Land charge, unless registered, void against purchaser for value.

*Searches in respect of Judgments, &c.*

The registers kept under the Judgments Acts have been transferred to the Land Registry under the Land Charges Act, 1900, s. 1 (*hh*).

Registers transferred to Land Registry Office.

Any person may require an official search to be made in the Land Registry. The officer making the search is directed to make and file in the office a certificate setting forth the result thereof; and office copies of the certificate are to be issued on requisition. In favour of a purchaser, the certificate, according to the tenor thereof, is conclusive, affirmatively or negatively, as the case may be.

Official searches.

Where a solicitor obtains an office copy certificate of result of search, he is not answerable in respect of any loss that may arise from error in the certificate; and where the solicitor is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons also are not so answerable; and where such persons obtain such an office copy without a solicitor they are protected in like manner (*i*).

Protection to solicitors and others obtaining an official search.

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(*f*) S. 10. This section does not apply to charges imposed against the will of the owner, *e.g.*, under sect. 257 of the P. H. Act, 1875: *R. v. Holt* (1889), 24 Q. B. D. 178; 59 L. J. Q. B. 113; but see L. T. Rules, 1908, r. 1 (3).

(*g*) S. 12.

(*h*) S. 13.

(*hh*) See 54 Sol. J. 559.

(*i*) Conv. Act, 1882, s. 2; Land Charges, &c. Act, 1888, s. 17.

No search  
now for  
judgments.

No search need or can now be made for judgments or Crown debts whenever obtained or entered into other than a search in the office of Land Registry for writs or orders affecting land.

What searches  
should now be  
made.

The present practice as to searches is as follows: If the vendor is a beneficial owner, the purchaser should make a requisition for an official search in the Land Registry in the name of the vendor (according to a form which he can obtain at the office) for (1) writs and orders and *lis pendens* for a period extending back five years; (2) annuities and rent-charges for a period extending back to the 26th April, 1855, or to the time when the vendor's title first accrued, or he attained full age, if later than that day; and (3) deeds of arrangement and land charges from the 1st January, 1889, or from the time when the vendor's title first accrued, if later than that day.

Against a  
vendor being  
a beneficial  
owner.

Searches  
against former  
owners, when  
necessary.

If the vendor has acquired the property by descent or devise, or otherwise than by purchase for value, similar searches should be made against his predecessor or predecessors in title back to and including the last purchaser for value.

Searches when  
vendors are  
trustees.

If the vendors are trustees, the only necessary search against them is for *lis pendens*. But in that case the usual searches should be made against the settlor, testator, or other person by whom the trust was created.

Certificate of  
result of  
former search.

Where the vendor has acquired the property by a recent purchase, he should be asked to produce the certificate of the result of search made by him against his vendor.

If a search discloses any writ or order, *lis pendens*, deed of arrangement, or land charge affecting the property, a release or discharge must be obtained (*l*).

#### *Other Searches and Inquiries.*

Searches in  
the Bank-  
ruptcy Court.

The records of the Bankruptcy Court should be searched by an intending purchaser in order to ascertain that the vendor or any person from whom he has derived title during the period covered

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(*l*) See further, as to usual searches, Wolst. Conv. Acts, 9th ed., 208—212. The usual searches are not required in the case of registered land except in regard to matters not covered by the registered title.

by the search has not been made a bankrupt, unless the situation in life of the party or other circumstances render such a search unnecessary. In strictness the search should be for twelve years, the period covered by the Statute of Limitations, but a five years' search is generally deemed sufficient (*l*).

When the property is leasehold, the search in bankruptcy against each person need not be carried back beyond the date when he acquired the property, for personal estate, including chattels real, acquired by an undischarged bankrupt after his bankruptcy may, at any time before the trustee intervenes, be dealt with by the bankrupt so as to confer a good title on a purchaser for value in good faith, whether he has notice of the bankruptcy or not (*m*). This rule does not apply to real estate (*n*). Hence, in the case of freeholds or copyholds, the search against each person should be carried back to the commencement of the period of search, though he may have acquired the property since then.

Chattels real acquired after bankruptcy may be dealt with by bankrupt until trustee intervenes.

*Secus*, as to real estate.

Where land in any part of England is sold under a title commencing later than 1862, it is not always safe to assume that the land has not been registered under the Land Registry Act, 1862, and a prudent purchaser will therefore in such a case inspect the public index and map of registered land kept at the Land Registry to ascertain whether the land has been registered or not (*o*).

When search should be made in office of Land Registry to ascertain whether land has been registered under Act of 1862.

Where copyhold land is the subject of the sale, the court rolls should be searched for entries affecting the property.

Searches in the court rolls.

An inquiry should be always be made of the tenant (if any) of the property as to the nature and terms of his tenancy. The

Inquiry of tenants.

(*l*) Dart, 7th ed., 1225; it is usual to search in Perry's Gazette, so far as it goes, and complete the search at the Bankruptcy Court.

(*m*) *Cohen v. Mitchell* (1890), 25 Q. B. D. 262; 59 L. J. Q. B. 409; *Re Clayton and Barclay*, 1895, 2 Ch. 212; 64 L. J. Ch. 615; *Re Kent County Gas, &c. Co.*, 1909, 2 Ch. 195; 78 L. J. Ch. 625.

(*n*) *Re New Land Association and Gray*, 1892, 2 Ch. 138; 61 L. J. Ch. 495; *Official Receiver v. Cooke*, 1906, 2 Ch. 661; 75 L. J. Ch. 757.

(*o*) See Brickdale & Sheldon's L. T. Acts, 2nd ed., 29.

occupation of land by a tenant affects a purchaser with constructive notice of all the tenant's rights, but not with notice of his lessor's title or rights (*p*).

Searches for charges for street improvements, &c.

Where property is in an urban district, it will be advisable in many cases to ascertain by inquiry at the office of the district council or other local authority, and by searching the registers directed by statute to be kept there, that the property is not subject to any unsatisfied charge for street or other improvements.

Disentailing deeds.

Where property is entailed, search should be made for enrolled deeds from the time when the tenant in tail attained full age, as he may have dealt with the property when his estate was in remainder.

Search against company.

Where a vendor company is incorporated under the Companies Acts (now the Companies (Consolidation) Act, 1908), search should be made at Somerset House for incumbrances and other entries against the company.

Inquiries by purchaser of chose in action.

Where the subject of sale is a chose in action of any description, as, for instance, personalty vested in trustees, a debt, or policy of insurance, &c., inquiry should be made of the trustees, or debtor, or insurance company, &c., as to whether they have received notice of prior dealings or incumbrances.

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(*p*) *Hunt v. Luck*, 1902, 1 Ch. 428; 71 L. J. Ch. 239.

## CHAPTER III.

### THE MODES AND FORMS OF ASSURANCE OF LAND, AND OTHER MATTERS RELATING TO THE COMPLETION OF A PURCHASE.

#### SECT. I.—*The modes of assurance of freehold land.*

A FEOFFMENT with livery of seisin was the ancient mode of conveying a freehold estate in possession in corporeal hereditaments, while incorporeal hereditaments, such as rents, advowsons, reversionary interests in freeholds, &c., being incapable of livery, were transferred by grant; hence the distinction between corporeal and incorporeal hereditaments, that the former were said to lie in livery, the latter in grant. After the passing of the Statute of Uses, an assurance of corporeal hereditaments might be effected by a deed of bargain and sale enrolled within six months after its date, the bargain and sale raising the use and the statute transferring the legal estate to the bargainee. But as the Act (*a*) which made enrolment necessary did not apply to chattel interests in land, the necessity for enrolment (as well as of livery of seisin) was avoided by adopting the mode of conveyance known as “lease and release,” which operated as follows: the lease was a bargain and sale for a year made by A. to B. in consideration of a nominal sum, whereby B. became without entry legal tenant in possession for a year, leaving a reversion only in A. This reversion, being a proper subject of release at common law, was released to B. by a deed dated the next day. By the Act 4 & 5 Vict. c. 21 (*b*), a release was made as effectual for the conveyance of freehold estates as a lease and release by the same parties.

Feoffment  
ancient mode  
of conveying  
freeholds..

Lease and  
release.

Statutory  
release.

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(*a*) 27 Hen. 8, c. 16.

(*b*) Now repealed by the Statute Law Revision Act. 1874.

Grant.

The R. P. Act, 1845, s 2, provides that, “after the 1st October, 1845, all corporeal hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery.” Since this Act the proper form of assurance of corporeal and incorporeal hereditaments (not being an appointment under a power) has been a deed of conveyance operating by way of grant, but the use of the word “grant” is not necessary (*c*), though it may be more correct where a new interest (*e.g.*, an easement) is created.

Appointment under power.

A power of appointment is a power contained in a deed or will whereby uses are limited, authorising some person or persons to appoint the land to other uses. An appointment made under such a power to a purchaser in fee simple determines the former uses and creates a new use in favour of the appointee, which new use, where the settlement is by deed, is served out of the seisin of the original grantee to uses, and takes effect by virtue of the Statute of Uses.

Distinction between power under Statute of Uses and common law authority.

It is necessary to distinguish between a power operating by virtue of the Statute of Uses and a common law authority. If a testator authorises his executors to sell his land, the land itself not being devised by the Will to uses, this is a common law authority. So, also, a power to sell and convey given by an Act of Parliament, *e.g.*, the power given to a tenant for life by the S. L. Acts, is a common law, or more properly a statutory, authority (*d*).

Conveyance by married woman.

A conveyance by a married woman of freehold land, not being her separate property under the M. W. P. Acts or otherwise, must be executed with the formalities required by the Fines and Recoveries Act, 1833 (*c*), *i.e.*, the deed must be acknowledged by her, and the husband must concur. The Act applies not only to freehold land, but also to any estate in copyholds other than an estate at law, a disposition whereof could, previously to the Act, have been effected by her, with the concurrence of the husband,

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(*c*) Conv. Act, 1881, s. 49; but see Lands C. C. Act, 1845, s. 132.

(*d*) Sug. Pow., 8th ed., 45.

(*e*) A deed acknowledged is no longer required in respect of a trust estate: M. W. P. Act, 1907, s. 1.

by surrender. It also extends to every kind of interest in corporeal or incorporeal hereditaments, including the proceeds of the sale of real estate directed to be sold, whether the same be an interest in possession or reversion (*f*), and also extends to a reversionary interest in a debt secured on mortgage of real estate (*g*).

The Court may dispense with the concurrence of the husband if he is a lunatic, idiot, or of unsound mind, or from any other cause incapable of executing a deed or making a surrender, or if his residence is not known, or if he is in prison, or living apart from his wife either by mutual consent or by sentence of divorce, or from any other cause whatever (*h*).

Court may dispense with husband's concurrence in certain cases.

When the husband has gone beyond the seas, the Court, before making an order, will require it to be shown that he has gone away under circumstances from which it may be inferred that he does not intend to return. If he is in correspondence with his wife and occasionally sends her money, the Court will not make the order (*i*). If he is living apart from her, the Court will, as a general rule, require to be satisfied that he does not contribute to her support; but exceptions have been made to this rule, *e.g.*, when the husband has refused to join without being paid for it (*k*).

What evidence requisite when husband is abroad, or is living apart from his wife.

An acknowledged conveyance by the wife without her husband's concurrence, where such concurrence has been dispensed with by an order, does not deprive the husband of the common law rights which he acquired in the land by reason of the coverture, viz., his right to the rents and profits during the joint lives and his estate by the curtesy (*l*).

Husband's common law rights not affected by wife's disposition without his concurrence under order of Court.

(*f*) *Re Jakeman's Trusts* (1883), 23 Ch. D. 344; 52 L. J. Ch. 363.

(*g*) *Miller v. Collins*, 1896, 1 Ch. 573; 65 L. J. Ch. 353.

(*h*) Fines and Recoveries Act, 1833, s. 91.

(*i*) *Re Squires* (1855), 17 C. B. 176; 25 L. J. C. P. 55.

(*k*) *Re Caine* (1883), 10 Q. B. D. 284; 52 L. J. Q. B. 354.

(*l*) *Fowke v. Draycott* (1885), 29 Ch. D. 996; 54 L. J. Ch. 977.

Powers of a married woman under S. L. Acts.

Where a married woman, who if she had not been a married woman would have been a tenant for life or a person having the powers of a tenant for life under the S. L. Acts, is entitled for her separate use, she can exercise the powers of the Acts without her husband, and if she is entitled otherwise than for her separate use, she can exercise them with his concurrence (*m*).

As to land vested in wife as trustee or mortgagee.

A married woman may, without her husband, dispose of trust estates vested in her : M. W. P. Act, 1907, s. 1 ; but the section does not expressly prevent the husband acquiring an interest in the property (*n*), hence the husband may still be a necessary party. Mortgage estates are on a different footing (*o*).

SECT. II.—*The mode of assurance of copyhold land, and other matters relating to copyholds.*

Mode of alienating copyholds—by surrender and admittance.

The usual mode of alienating copyholds is by a surrender into the hands of the lord of the manor of which the lands are held to the use of the purchaser, and the admittance of the latter by whom a fine is paid. The surrender and admittance may be made and taken either in Court or out of Court, and must be entered on the court rolls, and a person may be admitted by his attorney duly appointed, whether orally or by writing (*p*). The admittance should be in strict accordance with the terms of the surrender (*q*) ; and if there is any variation, the admittance will operate according to the surrender (*r*). Until admittance the surrenderor remains tenant to the lord, and the legal estate remains in him ; nevertheless, “ the right ” of “ a surrenderee ” before “ admittance ” is a legal interest (*s*). An unadmitted

(*m*) S. L. Act, 1882, s. 61.

(*n*) *Re Harkness and Allsopp*, 1896, 2 Ch. 358 ; 65 L. J. Ch. 726.

(*o*) *Re Brooke and Fremlin*, 1898, 1 Ch. 647 ; 67 L. J. Ch. 272 ; *Re Howgate and Osborn*, 1902, 1 Ch. 451 ; 71 L. J. Ch. 279 ; *Re West and Hardy*, 1904, 1 Ch. 145 ; 73 L. J. Ch. 91 ; but this last decision is not accepted in practice : Dart, 7th ed., 16—18.

(*p*) Cop. Act, 1894, ss. 84, 85.

(*q*) *Hayward v. Raw* (1861), 6 H. & N. 308 ; 30 L. J. Ex. 178.

(*r*) Elton, 2nd ed., 52.

(*s*) *Wainwright v. Elwell* (1816), 1 Madd. 627 ; *Phillips v. P.* (1832), 1 Myl. & K. at p. 664 ; 1 L. J. Ch. 214.

surrenderee cannot make a valid surrender (*t*), and a devisee is in the same position, but the customary heir may surrender before admission (*u*).

Where a testator directs his executors to sell his copyholds and only devises them in default of sale, or where he devises them to such uses as the executors shall appoint, a deed of bargain and sale will take the place of a surrender to the use of a purchaser (*uu*).

Bargain and sale by executors.

Where settled copyholds are standing in the names of trustees the proper course is for the tenant for life to convey them under S. L. Act, 1882, s. 20. The conveyance takes the place of a surrender by the trustees, and the steward of the manor is bound to admit the purchaser (*x*).

Conveyance of copyholds by tenant for life.

As regards copyhold land belonging to a married woman, and not being her separate property under the M. W. P. Acts or otherwise, she may, if tenant on the rolls, surrender it with the concurrence of her husband, on being separately examined by the steward of the manor, or otherwise in accordance with the custom of the manor (*xx*). If her estate in the land is only equitable she may convey it; or if she is tenant on the rolls she may declare herself a trustee of it for others, by a deed acknowledged as in the case of freeholds (*y*).

Disposition of copyholds of married woman.

The general rule is that, if a tenant on the rolls conveys copyholds, without licence, by a common law assurance the lord may claim a forfeiture on the ground that the dealing with the land contrary to custom tends to destroy evidence of the customary tenure.

Common law assurance gives rise to a forfeiture.

In the absence of a special custom, the lord of the manor is not bound to accept a surrender to such uses as the purchaser

Surrender to uses.

(*t*) Elton, 2nd ed., 64.

(*u*) Elton, 2nd ed., 148.

(*uu*) *R. v. Wilson* (1862), 3 B. & S. 201; 32 L. J. Q. B. 9.

(*x*) See *Re Naylor and Spencilla* (1886), 34 Ch. D. 217; 56 L. J. Ch. 453, where the trustees had not been admitted and the lord claimed an additional fine, which was disallowed.

(*xx*) See *Johnson v. Clark*, 1908, 1 Ch. at p. 309; 77 L. J. Ch. 127.

(*y*) F. & R. Act, 1833, s. 77; *Carter v. C.*, 1896, 1 Ch. 62; 65 L. J. Ch. 86.

shall appoint, and in default of such appointment to the use of the purchaser and his heirs (*z*); but having done so he is bound by the language of the surrender (*a*).

Purchase of copyholds by corporation.

Copyholds purchased by a corporation having power to hold land should be surrendered to trustees for their benefit, and not to the corporation directly, as the lord would be justified in refusing admittance to a body who could not discharge the services, and the effect of such admittance would also be the loss of the fines consequent upon death (*b*).

Position of tenant who is a trustee.

If a trustee is admitted tenant of copyhold land, he becomes responsible to the lord for the performance of the feudal services, and the customary fines will be payable on his death and alienation, and not on the death or alienation of the equitable owner.

Admission of joint tenants, &c.

Joint tenants are but one tenant to the lord, and co-parceners are but as one heir; so that the admission of one of many joint tenants or co-parceners is, apart from special custom (*bb*), the admission of all. They are consequently admitted on the payment of one fine (*c*); and on such admittance it would seem that, in the absence of special custom, the steward is only entitled to one fee (*d*). Joint tenants or co-parceners, when once admitted, can, without the payment of any additional fine, release their share to each other by deed of release. Where two out of three devisees in trust of copyholds released by deed their shares to the remaining trustee, the lord was held to be entitled only to a single fine on the admission of the remaining trustee, and the deed of release was held to operate as a disclaimer by the releasors of their right to be admitted (*e*).

Release by tenant on rolls to joint owner.

Ineffectual disclaimer.

But if one of several trustees purports to disclaim after he has acted, the disclaimer is void, and the admission of one

(*z*) *Flack v. Downing College* (1853), 13 C. B. 945; 22 L. J. C. P. 229.

(*a*) *Eddleston v. Collins* (1853), 3 D. M. & G. 1; 22 L. J. Ch. 480.

(*b*) 1 Watk., 4th ed., 37, 299.

(*bb*) *Howard v. Gwynn* (1901), 84 L. T. 505.

(*c*) *Elton*, 2nd ed., 73. But it would be larger in amount than on the admission of one person.

(*d*) *Traherne v. Gardner* (1856), 5 E. & B. 913; 25 L. J. Q. B. 201.

(*e*) *Wellesley v. Withers* (1855), 4 E. & B. 750; 24 L. J. Q. B. 134.

will be held the admission of all, and the fine must be paid accordingly (*f*).

In a case where a sole trustee died after admittance, and, his customary heir being out of the jurisdiction, a new trustee was appointed under the Trustee Acts, 1850 & 1852, it was held that one fine only was payable on the admittance of the latter (*g*).

Death of sole trustee after admittance.

Tenants in common, on the other hand, must be admitted severally, and a fine must be paid in respect of the share of each. On the death of any one of them, as there is no survivorship, his devisee or customary heir will be admitted, and pay a fine on the devise or descent of the share to him (*h*).

Tenants in common.

Admission on death of tenant in common.

If a copyhold tenement is limited to A. for life or for a less interest with remainders over, the admission of A. is the admission of all in remainder, and one fine only is payable (*i*), unless there is a special custom to the contrary (*k*). It would appear that the lord may take the full fine from the tenant for life or may apportion it between him and the remainderman (*l*).

Admission of tenant for life generally admission of remainderman.

Where a copyhold tenement is limited by will to A. for life, with remainder to such persons as A. shall appoint, the appointee is in the same position as if he had been named in the will, so that the admission of A. enures to his benefit (*m*).

And of appointee in remainder.

(*f*) *Bence v. Gilpin* (1868), 3 Ex. 76; 37 L. J. Ex. 36.

(*g*) *Bristow v. Booth* (1870), 5 C. P. 80; 39 L. J. C. P. 47.

(*h*) Elton, 2nd ed., 182.

(*i*) *Brown's Case* (1581), 4 Co. Rep. 22 b; Elton, 2nd ed., 186.

(*k*) *Doe v. Jenney* (1804), 5 East, 522; *Smith v. Glascock* (1858), 27 L. J. C. P. 192.

(*l*) Elton, 2nd ed., 186, 187; *Blackburne v. Graves* (1673), 1 Mod. 120. In this case Lord Hale said: "I do not see any inconvenience why the admission of tenant for life or years should not be the admittance of all in remainder, for fines are to be paid, notwithstanding, by the particular remainders; and so the books say it shall not prejudice the lord. It shall not prejudice the lord, for if a fine be assessed for the whole estate there is an end of the business; but if a fine be assessed only for the particular estate, the lord ought to have another."

(*m*) *Kensington v. Mansell* (1806), 13 Ves. 246. In *Scaman v. Woods* (1857), 24 Beav. 372; 27 L. J. Ch. 538, a copyhold was devised to A. for life, and the executors were directed to sell after A.'s death, which they did, and bargained and sold the property to B., the purchaser. Romilly, M.R., was of opinion that the admission of A. was not the admission of B. It will be

Admission of devise in fee enures for benefit of executory devisee.

Remainderman may surrender.

Also heir of remainderman, on payment of fine.

Devisee of remainderman must be admitted.

Again, if a copyhold tenement is devised to A. in fee, subject to an executory devise over to B. upon an event which happens, the admission of A. enures to the benefit of B. (*n*).

As the admission of the tenant for life is, in the absence of a special custom, the admission of the remainderman, it follows that the latter may, during the continuance of the particular estate, surrender (*o*). But if there is a special custom requiring a remainderman to be admitted, then, if he applies for admission during the continuance of the particular estate, he must pay the fine immediately (*p*).

If a remainderman dies intestate and his heir surrenders, the lord cannot be compelled to accept the surrender, whether made in the lifetime of the tenant for life or afterwards, until the fine on the descent is paid (*q*).

If the remainderman has devised his estate, the devisee must be admitted on the death of the tenant for life, and if he wishes to surrender in the lifetime of the tenant for life, he must be admitted and pay the fine before he makes the surrender.

If a remainderman surrenders or devises his estate, and the surrenderee or devisee dies intestate during the continuance of the particular estate, his heir can claim to be admitted on the payment of a single fine (*r*).

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seen that the will contained no devise in remainder after the death of A., so that the copyhold descended to the customary heir, and the subsequent conveyance to B. operated not as a remainder, but as an executory devise displacing the heir's title by descent. If the will had devised the property after the death of A. to C., the admission of A. would, in the absence of a special custom, have been the admission of C., and also of B. See *Randfield v. R.*, *inf*.

(*n*) So held by Kindersley, V.-C., in *Randfield v. R.* (1860), 1 Dr. & Sm. 310; and though the decision was reversed by the Court of Appeal (3 De G. F. & J. 766; 3 L. J. Ch. 113), on the ground that there was a special custom requiring remaindermen to be admitted, Turner, L.J., agreed with the opinion of the V.-C. on the general question.

(*o*) *Gyppey v. Bunney* (1596), Cro. Eliz. 504; *Auncelme v. A.* (1603), Cro. Jac. 31.

(*p*) *Evelyn v. Worsfold* (1849), 15 L. T. (O. S.) 4. See *Johnstone v. Spencer* (1885), 30 Ch. D. 581, 588.

(*q*) *R. v. Dullingham* (1838), 8 Ad. & El. 858; 8 L. J. K. B. 37.

(*r*) *Garland v. Alston* (1858), 3 H. & N. 390; 27 L. J. Ex. 438.

If a copyholder surrenders to particular uses which determine, he is in of his old seisin, and need not be admitted again (s). And if a copyholder devises to uses which do not exhaust the whole fee, the reversion descends to the heir (t).

When uses determine, copyholder is in of his old seisin.

In a case where copyhold land was devised to trustees for a term of years, and subject thereto to A. in fee, and the lord admitted A. "according to the purport and effect of the will," who paid a full fine, it was held that the lord could not afterwards insist on the admittance of the trustees (u).

Admittance of termor cannot be insisted on.

On the death of a tenant in possession intestate, the heir must come in and be admitted, or the lord may seize the lands into his hands *quousque* after proclamation has been made at three consecutive courts (x); and if the lord holds under such a seizure for twelve years, there being no disability, the heir's right to compel admittance is gone (y).

Heir must be admitted, or lord may seize.

A fine on admission may be certain or arbitrary. An arbitrary fine must be reasonable, which has been defined as not exceeding two years' improved value on the admission of a single tenant. If two or more persons are admitted as joint tenants, two years' value may be taken for the first tenant, half that amount for the second, half of the latter amount for the third, and so on (z). But where by custom a tenant of the manor, if admitted to further copyholds, may claim a reduction on a fine arbitrary, this may be taken into account when a stranger is admitted (zz). And in manors where the admission of a tenant for life is the admission of the tenant in remainder also,

Arbitrary fine on admission, what may be taken.

(s) 9 Co. Rep. 107 a. But see now Inheritance Act, 1833, s. 3.

(t) *Bullen v. Grant* (1589), Cro. Eliz. 148. In *Doe v. Laives* (1837), 7 A. & E. 195; 7 L. J. K. B. 97, it was held, that if a copyhold is devised to A. for life, and the reversion descends on the heir, the admission of A. is the admission of the heir.

(u) *Everingham v. Ivatt* (1873), 8 Q. B. 388; 42 L. J. Q. B. 203.

(x) *Elton*, 2nd ed., 152.

(y) *Walters v. Webb* (1870), 5 Ch. 531; 39 L. J. Ch. 677; R. P. Lim. Act, 1874, ss. 1, 2.

(z) *Wilson v. Hoare* (1839), 10 A. & E. 236; *Sheppard v. Woodford* (1839), 5 M. & W. 608; 9 L. J. (N. S.) Ex. 90; see also *Hall v. Bromley* (1887), 35 Ch. D. 642; 56 L. J. Ch. 722.

(zz) *A.-G. v. Sandover*, 1904, 1 K. B. 689; 73 L. J. K. B. 478,

it is apprehended that the lord may on the same principle claim a fine not exceeding two years' value for the tenant for life, and half that amount for the remainderman.

Fine cannot be recovered after six years from admission.

The fine becomes payable on admission, and the lord cannot recover it after six years from admission. The fact that he delays to assess it does not prevent time from running (*a*).

Admission on appointment of new trustees.

Where property is in settlement, and an admission takes place on the appointment of new trustees, the fine payable in respect of such admission must be borne by the particular estate and the estate in remainder, in proportion to the value of such estates respectively (*b*).

Release from trustees.

Where copyholds were devised to trustees for certain persons who sold the copyholds, and the purchaser was admitted on the surrender of the customary heir, the purchaser was held entitled to call for a release from the trustees of their bare right to be admitted (*c*).

Statute of Uses.

The Statute of Uses does not extend to copyholds, so that if a surrender is made to the use of A. and his heirs on trust for other persons, A. is the person to be admitted; the others only acquire equities.

A covenant to surrender "To the use of" a person only confers an equity; it means that the covenantor will surrender to the lord for the benefit of the person named.

Statute *De Donis*.  
Entailable by custom.

The Statute *De Donis* does not apply to copyholds, so that unless the custom of the manor authorises the creation of entails, all *legal* limitations of copyholds in the form of an estate tail would only be conditional fees. And an equitable estate in copyholds can only, it seems, be entailed where there is a custom to entail the legal estate (*d*).

Equitable interests.

An equitable interest in copyholds may be conveyed by deed (*e*),

(*a*) *Monckton v. Pague*, 1899, 2 Q. B. 603; 68 L. J. Q. B. 951.

(*b*) *Carter v. Sebright* (1859), 26 Beav. 374; 28 L. J. Ch. 411; *Re Bullock's S. E.* (1904), 91 L. T. 651.

(*c*) *Steele v. Waller* (1860), 28 Beav. 466; see *Gurland v. Mead* (1871), L. R. 6 Q. B. 411; 40 L. J. Q. B. 179.

(*d*) *Vaizey on Settlements*, 1307; this is a moot point.

(*e*) *Elton*, 2nd ed., 93; *R. v. Hendon* (1788), 2 T. R. 484.

but it cannot be surrendered except for the purpose of barring an estate tail (*f*).

Copyholds can only be leased by the copyholder for one year, or for any less period, without the licence of the lord, unless there is a custom in the manor enabling the tenant to lease for a longer period; and an actual lease without licence for any period not warranted by the custom of the manor would operate as a forfeiture. Such leases are, however, good and binding as between the parties, and also all other persons, except the lord, who may enter for a forfeiture; but such right of entry may be waived or destroyed by any act on the part of the lord which amounts to an acknowledgment of the title of the copyholder, or by the lord not enforcing his right for twelve years (*g*).

Leases of  
copyholds

Copyholds may be forfeited by the tenant's voluntary or permissive waste, such as pulling down houses, cutting down trees, digging for mines, failing to keep the property in good repair, or any other act or omission whereby the property becomes deteriorated. A forfeiture may also be incurred by neglect to attend the customary court after being summoned, or by a refusal to pay the fine when certain or reasonable, or the customary rent when demanded, or by the tenant wilfully withholding his services, &c. (*h*). Equity, however, will in certain cases relieve against a forfeiture (*i*), even against a voluntary act, unless no compensation can be made to the lord (*k*).

Forfeiture by  
waste, &c.

The widow of a copyholder is not entitled to dower except by custom. Customary dower is usually called freebench, and depends upon the custom of the particular manor. It is generally limited to the lands of which the husband *dies* seised, but sometimes it extends to all the lands of which he is seised at any time during the coverture. In most manors the widow's right to freebench is confined to one-third of the land, sometimes it extends to

Freebench

(*f*) Fines and Recoveries Act, 1833, s. 50.

(*g*) Elton, 2nd ed., 35; R. P. Lim. Act, 1874, ss. 1, 2.

(*h*) Elton, 2nd ed., 225—227.

(*i*) See *Andrews v. Hulse* (1858), 4 K. & J. 392; 27 L. J. Ch. 655.

(*k*) Elton, 2nd ed., 223; but see 1 Watk., 4th ed., 422.

some other part, and sometimes to the whole. It is generally for the life of the widow, but sometimes during widowhood only (*l*).

No freebench  
out of a trust.

A widow is not entitled to freebench out of a *trust estate* in copyholds (*m*), nor out of copyholds of which her husband is surrenderee, if he dies before admittance (*n*). And freebench will be defeated by the alienation of the husband by act *inter vivos*, or by a devise by will (*o*), except where under a special custom her right can only be barred by her surrender (*oo*).

Testamentary  
directions to  
sell, and  
scheme for  
saving double  
fine under  
a bargain and  
sale.

When a testator has in view an immediate conversion of his copyhold lands, it is usual, instead of devising them to trustees upon trust for sale, to authorise the executors to sell them, or to devise them to such uses as his executors may appoint, in order to save the necessity of a double admittance and a double fine, for, in the event of the property being sold under such a direction before the lord has compelled the heir or devisees in trust to be admitted, the purchaser is entitled under a bargain and sale to be admitted on the payment of a single fine (*p*).

Power of lord  
with limited  
interest.

The lord, however limited his interest may be, can accept surrenders of copyholds held of the manor as fully as if he were seised of the manor in fee, and if, after having accepted a surrender, his interest should determine before admittance, his successor would be compelled to admit the surrenderee (*q*).

SECT. III.—*The form and ordinary parts of a deed of conveyance.*

The ordinary parts of a deed of conveyance are the names and descriptions of the parties, the recitals (if any), the operative part (including the consideration, the conveyance itself, the parcels, and the *habendum*), and the covenants, if any are required.

(*l*) Elton, 2nd ed., 158, 159.

(*m*) *Forder v. Wade* (1794), 4 Bro. C. C. 521.

(*n*) *Smith v. Adams* (1854), 5 D. M. & G. 712; 24 L. J. Ch. 258.

(*o*) Elton, 2nd ed., 163—166; *Lacey v. Hill* (1875), 19 Eq. 346; 44 L. J. Ch. 215.

(*oo*) *Powdrell v. Jones* (1854), 2 Sm. & G. 407; 24 L. J. Ch. 123; Carson, 2nd ed., 372.

(*p*) *Glass v. Richardson* (1852), 2 D. M. & G. 658; 22 L. J. Ch. 105; see also *R. v. Wilson* (1862), 3 B. & S. 201; 32 L. J. Q. B. 9; *Garland v. Mead* (1871), L. R. 6 Q. B. 441; 40 L. J. Q. B. 179.

(*q*) Co. Lit. 59 b.

*Recitals.*

The recitals in a deed of conveyance to a purchaser should be as few and simple as possible; see Preliminary Hints on Drafting, *supra*. Recitals.

Where the vendor is seised at law for an estate in fee simple free from incumbrances, a recital of such seisin is sufficient without referring to the instrument under which the title is derived, or the deed may be drawn without any recital at all. A recital of seisin is, as a general rule, desirable—first, because after twenty years such a recital is conclusive evidence of the seisin, unless proved to be inaccurate (*r*); and secondly, because it may in some cases create an estoppel. Recital of grantor's seisin desirable.

The doctrine of estoppel is that a distinct averment in a deed concludes the parties to it, or that one of them whose averment it is, and all persons deriving title under him, even if in fact the averment be untrue. Thus, if a conveyance recites that the grantor is seised in fee, whereas in fact he has not the legal estate, the grantee is said to take an estate by estoppel. If the grantor subsequently acquires the legal estate, the estoppel is fed, and from that time the grantee is seised at law just as if the legal estate had been vested in the grantor at the date of the deed, so that if the grantor makes a subsequent conveyance to another person as purchaser for value without notice of the first deed, the latter takes nothing (*s*). But to create an estoppel by such a recital, the statement must be precise that the grantor has the legal seisin—a recital that the grantor is “seised or entitled at law or in equity,” or “is seised or otherwise well and sufficiently entitled,” does not create an estoppel, nor does a covenant by the grantor that he has a good right to convey (*t*), Estoppel by recital.

To create estoppel, statement must be precise.

Covenant does not create estoppel.

(*r*) V. & P. Act, s. 2, r. 2. A deed twenty years old containing a recital of the vendor's seisin is not, however, a sufficient commencement of title, so as to preclude the purchaser from requiring a forty years' title: *Re Wallis and Grout*, 1906, 2 Ch. 206; 75 L. J. Ch. 519, in which Swinfen Eady, J., disapproved of *dicta* to the contrary in *Bolton v. London Sch. Bd.* (1878), 7 Ch. D. 277; 47 L. J. Ch. 461.

(*s*) *Bensley v. Burdon* (1826), 2 Sim. & St. 519; 8 L. J. Ch. 85.

(*t*) *Right v. Bucknell* (1831), 2 B. & Ad. 278; 9 L. J. (O. S.) K. B. 304; *Heath v. Crealock* (1874), 10 Ch. 22; 44 L. J. Ch. 157.

and there can be no estoppel when the truth appears by the same instrument (*u*).

Statement may estop both parties or only one.

A statement in a deed may estop both parties or only one. When it is one which both parties have mutually agreed to admit as true, it is an estoppel on both, but where it is intended to be a statement of one party only, the estoppel is confined to that party, and the intention is to be gathered from the whole instrument. Where there is a recital of the grantor's seisin, and also a covenant to the same effect, the recital will be considered as his statement only, because if it were treated as binding on the grantee, the covenant would be nugatory (*c*).

Recital of seisin with covenant estops grantor only.

Estoppel does not apply to trustees for public purposes.

The doctrine of estoppel applies only to private individuals, and not to trustees for public purposes (*y*).

Covenants for title run with estate by estoppel.

An estate by estoppel has, as between the parties bound by it, the incidents of a valid legal estate. It passes by deed, and the deed carries with it the benefit of covenants which, if the estate were legal, would run with the land, *e.g.*, covenants for title; whereas if A. purports to convey land to B. by a deed not creating an estoppel, and B. purports to convey the same land to C., and it afterwards turns out that owing to a prior conveyance by A. he had no estate at the date of the conveyance to B., nothing will have passed to C., hence C. cannot sue on any covenant for title, either express or implied, contained in the conveyance to B. (*z*).

Covenants for title of vendor who has no estate do not pass to assign of purchaser, where no estoppel.

Deed creating power should be recited.

If the vendor has a power of appointment (*e.g.*, under a conveyance to uses to bar dower) the instrument creating the power should be referred to. So, if the vendor is a trustee for sale, the trust instrument should be recited, and it should also be shown by the recitals that the vendor has made the sale in accordance with the trust; but as a trustee may now sell either

Recitals where the vendor is trustee for sale, and in other cases.

(*u*) Co. Lit. 352 b; and see Norton, 194.

(*v*) *Young v. Raincock* (1849), 7 C. B. 310; 18 L. J. C. P. 193; *Stroughill v. Buck* (1850), 19 L. J. Q. B. 209. For a case in which both parties were held to be estopped, see *Bowman v. Taylor* (1834), 2 A. & E. 278; 4 L. J. K. B. 62.

(*y*) *Fairtitle v. Gilbert* (1787), 2 T. R. 169.

(*z*) *Onward Bly. Socy. v. Smithson*, 1893, 1 Ch. 1; 62 L. J. Ch. 138.

by private contract or public auction (*a*), the conveyance need not, where the trust was created after 1881, state which of these modes is adopted, but should recite generally that the vendor has agreed to sell. Where the vendor is conveying less than an unincumbered fee simple, the recital should show the precise nature of his interest, and the nature and amount of the charges (if any) thereon. And if any person besides the vendor and purchaser is made a party to the deed, it should be shown for what purpose his concurrence is necessary.

The consideration for the conveyance may be stated in the recitals or in the body of the deed (*b*). Consideration.

The Conv. Act, 1881, s. 56 (1), provides :—

Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt (*c*). Receipt in deed or indorsed, authority for payment to solicitor.

Sect. 56 is extended by the Trustee Act, 1893, s. 17 (1), to the case of a trustee-vendor.

“Solicitor” in s. 56 means the solicitor acting for the party to whom the money is expressed to be paid, but it is conceived that, in the absence of anything to suggest the contrary, the purchaser is bound to assume that the solicitor producing the deed is acting as solicitor for that party (*d*). Meaning of “solicitor” in s. 56.

#### *Parcels and General Words.*

The property which is the subject of sale should be correctly described either in the body of the deed or in a schedule. The parcels were formerly followed by what were called “general words,” and an “all the estate” clause, but these are rendered unnecessary by ss. 6 and 63 of the Conv. Act, 1881, which apply Parcels.  
General word now implied.

(*a*) T. Act, 1893, s. 13, as to trusts within that s.

(*b*) Conv. Act, 1881, ss. 54, 55. See Wolst. Conv. Acts, 9th ed., 120; *Capell v. Winter*, 1907, 2 Ch. 376; 76 L. J. Ch. 496.

(*c*) See Wolst. Conv. Acts, 9th ed., 121.

(*d*) *King v. Smith*, 1900, 2 Ch. 425; 69 L. J. Ch. 598.

only so far as a contrary intention is not expressed in the conveyance, and only to conveyances made after 1881 (*e*).

General words  
pass all ways  
actually used.

The general words in s. 6 will pass to the purchaser all ways actually used by him at the date of the conveyance, although only used by the vendor's permission. Thus, where a lessee had by the lessor's permission used a way over adjoining property of the latter, and the property in the lease was subsequently conveyed in fee simple by the lessor to the lessee, it was held that the conveyance passed a right of way such as had been actually enjoyed during the lease (*f*).

Generally a purchaser should be advised not to add words referring to appurtenances, as they might restrict the operation of the s.

Vendor may  
sometimes  
insist on the  
general words  
being quali-  
fied.

Sect. 6 is not intended to alter the rights of the parties under a contract for sale. Whenever, therefore, under a contract before the Act, a vendor might have insisted that the general words of the conveyance should be limited to rights legally appurtenant to the land conveyed, *e.g.*, where the more extensive words in ordinary use might have the effect of creating a right of way *de novo*, which the purchaser had not contracted for, the vendor is now entitled to have a provision inserted in the conveyance limiting the general words implied by s. 6 in like manner (*g*).

Presumption  
that soil of  
adjoining road  
up to middle  
passes by  
conveyance  
may be re-  
butted.

A conveyance of land adjoining a public highway passes *prima facie* the soil of the road up to the middle of it if belonging to the vendor, and this is so even where the land is described by reference to a plan annexed, the measurement and colouring of which would exclude it (*h*). But this presumption is liable to be rebutted by circumstances showing a contrary intention (*i*),

(*e*) See Wolst. Conv. Acts, 9th ed., 30, 128.

(*f*) *International Tea Co. v. Hobbs*, 1903, 2 Ch. 165; 72 L. J. Ch. 543.

(*g*) *Re Peck and London Sch. Bd.*, 1893, 2 Ch. 315; 62 L. J. Ch. 598.

(*h*) *Berridge v. Ward* (1861), 10 C. B. (N. S.) 400; 30 L. J. C. P. 218; the rule applies to streets in a town: *Re White*, 1898, 1 Ch. 659; 67 L. J. Ch. 430; and to a non-tidal river: *Great Torrington, etc. Conservators v. Stevens*, 1904, 1 Ch. 347; 73 L. J. Ch. 124.

(*i*) *Pryor v. Petre*, 1894, 2 Ch. 11; 63 L. J. Ch. 531; *Mappin v. Liberty*, 1903, 1 Ch. 118; 72 L. J. Ch. 63.

and it does not apply to a conveyance of land abutting on ground intended to be laid out as a street, but not yet dedicated to the public (*k*).

If any exceptions or reservations are intended, they should follow the description of the parcels. An exception must be of part of the thing granted, and which is existing at the time, *e.g.*, the mines under the surface. A reservation is of some right created for the first time over or in connexion with the thing granted, *e.g.*, a right of way or other easements to be enjoyed over the land, and operates by way of re-grant. Hence a conveyance which contains a reservation should be executed by the purchaser (*l*), unless, as is more convenient, the new rights are conveyed to the use of the vendor or to the uses of a settlement.

Exceptions and reservations.

### *Habendum, &c.*

After the parcels comes the *habendum*, the office of which is to define or limit the duration of the estate to be taken by the grantee.

*Habendum.*

In order to create an estate in fee simple it is necessary to limit the land to the grantee and his heirs, or to the grantee "in fee simple" (*m*). A limitation to A. "in fee," omitting "simple," passes only a life estate (*n*).

Word "heirs" or "in fee simple" necessary.

Where freeholds are conveyed to a grantee to uses, they must be conveyed to him "in fee simple" or "and his heirs," "To the Use, &c." If these words are omitted he will only take a life estate and the uses will fail on his death. In a Will no grantee to uses is required.

Where the grantee is to take the fee simple for his own use, it is usual to limit the land unto him and to his use. The object

Limitation unto and to use of grantee.

(*k*) *Leigh v. Jack* (1879), 5 Ex. D. 264; 49 L. J. Ex. 220.

(*l*) *Wickham v. Hawker* (1840), 7 M. & W. 63; 10 L. J. Ex. 153; *May v. Bellerille*, 1905, 2 Ch. 605; 74 L. J. Ch. 678.

(*m*) This rule applies even where the grantor has only an equitable estate in the land conveyed: *Re Irwin*, 1904, 2 Ch. 752; 73 L. J. Ch. 832. But a fee simple may possibly be conferred without these words, if an intention to that effect is clearly shown: *Re Tringham's Trusts*, 1904, 2 Ch. 487; 73 L. J. Ch. 693; doubted in *Norton*, 332; *Re Oliver*, 1905, 1 Ch. 191; 74 L. J. Ch. 62.

(*n*) *Re Ethel and Mitchells*, 1901, 1 Ch. 945; 70 L. J. Ch. 498; *Re Ford and Ferguson*, 1906, 1 Ir R. 607.

is (1) to negative, in the case of a voluntary conveyance, the implication of a resulting use to the grantor; and (2) to show that the grantee is to take the legal estate by the common law without any use being engrafted on it under the Statute of Uses.

When limitation to two or more persons creates joint tenancy or tenancy in common.

A limitation to two or more persons in fee simple makes them joint tenants at law unless words importing a tenancy in common are added; and the grantees will be joint tenants in equity also, if they have paid the purchase-money in equal shares (*o*), but if their contributions are of unequal amount, they will be considered in equity as tenants in common in proportion to their respective contributions (*p*). Corporations may now hold land jointly with an individual (*pp*).

Conveyance to partners.

Where a conveyance is made to two partners as joint tenants for partnership purposes, the survivor will hold the property as to the share of the deceased partner in trust for his personal representatives. And the same principle would apply to a purchase by several persons for the purpose of a joint adventure or speculation (*q*).

Merger of equitable estate in common in legal joint tenancy.

If the legal estate in land held in trust for two persons as tenants in common is at their request conveyed to them as joint tenants, the equitable estate merges in the legal, and they become joint tenants at law and in equity (*r*).

### *Covenants for title.*

Statutory covenants by vendor conveying as beneficial owner.

A vendor who is a beneficial owner is bound to covenant for title as to his own acts and the acts of all persons through whom he derives title otherwise than as a purchaser for value; and if a vendor conveys and is expressed to convey as beneficial owner, the usual qualified covenants for title by him will now be implied, by virtue of the Conv. Act, 1881, s. 7, for right to convey (*s*), for

(*o*) *Arcling v. Knipe* (1815), 19 Ves. 441; Norton, 391 *et seq.*

(*p*) *Ripden v. Fallier* (1751), 2 Ves. sen. at p. 258.

(*pp*) Bodies Corporate (Joint Tenancy) Act, 1899.

(*q*) *Lake v. Cradlock* (1732), 3 P. W. 158; *Morris v. Barrett* (1829), 3 Y. & J. 384. See *Davis v. D.*, 1894, 1 Ch. 393; 63 L. J. Ch. 219; and see Partnership Act, 1890, ss. 20, 22.

(*r*) *Re Selous*, 1901, 1 Ch. 921; 70 L. J. Ch. 402.

(*s*) In one case A. granted a lease of land, and afterwards for value took

quiet enjoyment, for freedom from incumbrance, and for further assurance (*t*).

And if the property is leasehold, the usual further covenant is implied as to the validity of the lease.

A vendor who is not a beneficial owner is not bound to enter into any other covenant than that he has done no act to incumber the property ; and if a vendor conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, he will be deemed, under s. 7 (F), to have given the usual covenant against incumbrances.

Covenant by vendor who is not beneficial owner ;

The same section also provides as follows :—

(2.) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, within this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction ; and a covenant on his part shall be implied accordingly.

by party directing as beneficial owner ;

(3.) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, within this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner ; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.

by husband and wife.

(4.) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, or by

a surrender of the lease. He then conveyed "as beneficial owner" to a purchaser in fee. It was afterwards discovered that the lessee had, previously to the surrender, granted sub-leases by way of mortgage, which remained valid. It was held that A. was liable under the statutory covenant for title for the acts of the lessee: *David v. Sabin*, 1893, 1 Ch. 523 ; 62 L. J. Ch. 347.

(*t*) As to all the implied statutory covenants, see Wolst. Conv. Acts, 9th ed., 33—45.

direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.

(5.) In this section a conveyance (*u*) includes a deed conferring the right to admittance to copyhold or customary land, but does not include a demise by way of lease at a rent, or any customary assurance, other than a deed, conferring the right to admittance to copyhold or customary land.

(6.) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

(7.) A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.

Whether, on sale by trustees, covenants for title from beneficiaries can be required.

When, under a will, trustees are directed to sell for the payment of debts or for other purposes, and the purchase-money or the residue of the purchase-money (after discharging debts, or satisfying any other purposes for which the sale is to be made) is to be divided among persons who are *sui juris*, it used to be the practice to make the beneficiaries parties, in order to covenant for title with reference to their respective interests; but this practice has not been adopted by the Court in sales under its decree, and a purchaser cannot now insist on the concurrence of the beneficiaries in order to have their express or implied covenants for title (*x*). But where a trust for sale is exercisable at the request of any person, a purchaser may, though it will generally be undesirable, require covenants for title from that person (*xx*).

Covenants by tenant for life.

Where a power of sale is exercised with the consent of a tenant for life, or a tenant for life conveys under a statutory power, he can be required to enter into covenants for title (*y*), limited,

(*u*) See definitions of "conveyance" and "convey": Conv. Act, 1881, s. 2 (5).

(*x*) Dart, 7th ed., 568; *Cottrell v. C.* (1866), 2 Eq. 330; 35 L. J. Ch. 466; *Re Twycloe and Miles* (1884), 27 Ch. D. 315; 54 L. J. Ch. 71; *Re Douglas and Powell*, 1902, 2 Ch. 296, 313; 71 L. J. Ch. 850.

(*xx*) See note to Form No. 116, Special Conditions.

(*y*) S. L. Act, 1882, s. 56; *Re London Bridge Acts* (1842), 13 Sim. 176; *Ponlett v. Hood* (1868), 5 Eq. 115; 37 L. J. Ch. 224.

however, as regards the remainder expectant on his life estate, to his own acts and the acts of persons claiming under him (*z*).

On a sale by the husband and wife of the wife's estate, not being her separate property by statute or otherwise, the husband and wife should both convey as beneficial owners, so as to be liable to implied covenants for title (*a*).

Implied covenants by husband and wife on sale of wife's estate.

Under the usual covenants for title the purchaser, in case of eviction, may recover the value of the land and also of houses which he had built thereon subsequently to his purchase (*b*).

What may be recovered under covenants for title.

If the owner of land subject to a mortgage sells part of it, and the conveyance does not refer to the mortgage, but contains a covenant for further assurance, that covenant is as effectual as a covenant against incumbrances, and the unsold part must bear the whole debt (*c*).

Effect of covenant for further assurance.

Defects of title which come within the terms of the ordinary covenants for title are not excluded from their operation because they appear on the face of the conveyance or are otherwise known to the purchaser (*d*), unless of course the property is conveyed subject to them.

Defects appearing in conveyance are within covenants.

Where the conveyance omits to notice a right of way created over the land, there is a breach of the statutory covenant upon the execution of the deed, and the measure of damages is the difference between the value of the property as it is purported to be conveyed, and its value as the vendor had power to convey it, and in addition the costs incidental to ascertaining such latter value (*e*).

Measure of damages.

### Deeds.

Where the deeds are retained by the vendor, an acknowledgment, &c., as to deeds.

(*z*) Dart, 7th ed., 571.

(*a*) Conv. Act, 1881, s. 7 (3).

(*b*) *Bunny v. Hopkinson* (1859), 27 Beav. 565; 29 L. J. Ch. 93.

(*c*) *Re Jones*, 1893, 2 Ch. 461; 62 L. J. Ch. 996; and see *Re Darby*, 1907, 2 Ch. 465; 76 L. J. Ch. 689.

(*d*) *Page v. Midland Ry. Co.*, 1894, 1 Ch. 11; 63 L. J. Ch. 126; *G. W. Ry. Co. v. Fisher*, 1905, 1 Ch. 316; 74 L. J. Ch. 241.

(*e*) *Turner v. Moon*, 1901, 2 Ch. 828; 70 L. J. Ch. 822; *G. W. Ry. Co. v. Fisher*, *sup.*

ment of the purchaser's right to production and delivery of copies, and if the vendor is a beneficial owner an undertaking for their safe custody, should be added.

Should be given to grantee to uses.

Where there is a grantee to uses the acknowledgment and undertaking should be given to him so as to run with the limitations.

The operation and effect of such an acknowledgment and undertaking are defined by s. 9 of the Conv. Act, 1881 (*f*).

SECT. IV.—*The law as to covenants running with the land, restrictive covenants, and implied easements.*

When the benefit of a covenant runs.

The benefit of covenants relating to land, *e.g.*, covenants for title and covenants to indemnify land against charges on it, runs with the land in favour of each successive transferee provided that he is in of the same estate as the original covenantee, and that the covenantee, at the date of the covenant being entered into, had the land to which the covenant relates (*g*).

Conv. Act, 1881, s. 58.

Since the Conv. Act, 1881, the covenant runs in spite of the fact that the "heirs, &c." of the covenantee are not mentioned (*h*).

Landlord and tenant.

Covenants, as between landlord and tenant, run with the land as to both burden and benefit when the covenant extends to a thing *in esse* parcel of the demise, and when it touches or concerns the thing demised, but covenants which are collateral and do not touch or concern the thing demised do not so run (*i*).

(*f*) Wolst. Conv. Acts, 9th ed., 46—52.

(*g*) *Spencer's Case*, 5 Co. Rep. 16a; Smith's L. C., 11th ed., 55; *Rogers v. Hosegood*, 1900, 2 Ch. 388; 69 L. J. Ch. 652; *Dyson v. Forster*, 1909, A. C. 98; 78 L. J. K. B. 246.

(*h*) Conv. Act, 1881, s. 58; Wolst. Conv. Acts, 9th ed., 123; and see *Dyson v. Forster*, *sup.*

(*i*) See cases collected in Smith's L. C., 11th ed., under *Spencer's Case*, 55 *et seq.*; Conv. Act, 1881, ss. 10 and 11; Wolst. Conv. Acts, 9th ed., 52—54; *Rickatts v. Enfield Churchwardens*, 1909, 1 Ch. 544; 78 L. J. Ch. 294; *Dever v. Goodman*, 1909, A. C. 72; 78 L. J. K. B. 209; *Lyle v. Smith*, 1909, 2 Ir. R. 58.

In the case of a rent-charge the *terre* tenant is liable to pay it (*k*). *Terre* tenant.

If lands are conveyed to uses, covenants, in order to run with the land, should be entered into with the grantee to uses (*l*).

The burden of a covenant entered into by the owner of land cannot be made to run with it *at law*, so as to be enforceable against an assign of the covenantor, except in cases of landlord and tenant, or where the so-called covenant is in fact the grant of an easement (*m*).

Burden of covenant will not run at law except as between landlord and tenant;

Equity will not interfere to enforce a covenant against persons who cannot be sued on it at law, unless it comes within the class of what are called restrictive or negative covenants, and in particular will not enforce against an assign of the covenantor a covenant to build, or repair, or insure, or do any act involving the expenditure of money (*n*).

nor in equity except where the covenants are restrictive or negative.

But as regards restrictive or negative (*nn*) covenants, *e.g.*, covenants not to build on land, or to use it only in a particular manner, equity will interfere by injunction against the original covenantor, or any person claiming under him, either as a volunteer or as purchaser for valuable consideration with notice of the covenant, including an underlessee or occupier (*o*), to restrain him from doing any act which would be a breach of the covenant (*p*); and he cannot protect himself on the ground of want of notice by not investigating the title when the

Breach of restrictive covenant will be prevented by injunction as against the assignee of covenantor with notice.

(*k*) *Thomas v. Sylvester* (1873), L. R. 8 Q. B. 368; 42 L. J. Q. B. 237; *Re Herbage Rents*, 1896, 2 Ch. 811; 65 L. J. Ch. 871; *Pertwee v. Townsend*, 1896, 2 Q. B. 129; 65 L. J. Q. B. 659; *Foley v. Dudley Corporation*, 1910, 1 K. B. 317; 79 L. J. K. B. 410.

(*l*) *Rouch v. Wadham* (1805), 6 East, 289. In this case the question was as to the burden of a covenant, but the principle applies to the benefit also.

(*m*) *Austerberry v. Oldham Corpn.* (1885), 29 Ch. D. 750; 55 L. J. Ch. 633.

(*n*) *Haywood v. Brunswick, &c. Co.* (1881), 8 Q. B. D. 403; 51 L. J. Q. B. 73; *L. & S. W. Ry. Co. v. Gomm* (1882), 20 Ch. D. 562; 51 L. J. Ch. 530; *Re Nisbet and Potts*, 1905, 1 Ch. at p. 397; 74 L. J. Ch. 310; aff. 1906, 1 Ch. 386; 75 L. J. Ch. 238.

(*nn*) See *Porcell v. Hemsley*, 1909, 2 Ch. 305; 78 L. J. Ch. 741.

(*o*) *Hall v. Erwin* (1887), 37 Ch. D. 74; 57 L. J. Ch. 95; *Mander v. Faleke*, 1891, 2 Ch. 554; 61 L. J. Ch. 3; *Taape v. Douse* (1905), 92 L. T. 319.

(*p*) *Mann v. Stephens* (1846), 15 Sim. 377; *Talk v. Moxhay* (1848), 2 Ph. 477; 18 L. J. Ch. 83; *Coles v. Sims* (1854), 5 D. M. & G. 1; 23 L. J. Ch. 258.

proper investigation of it would have disclosed the restrictive covenant (*q*).

It is desirable to have notice of a restrictive covenant entered into by the vendor endorsed on a common title deed retained by him.

In framing restrictive covenants it is important that the respective hereditaments which obtain the benefit and bear the burden of them should be clearly defined.

Whether  
benefit of,  
passes on  
alienation.

Restrictive covenants are generally intended to prevent some adjoining land belonging to the covenantee from being depreciated by the acts prohibited. If, therefore, no adjoining land is retained, as where a vendor sells the whole of his estate to a single purchaser who enters into a restrictive covenant, such a covenant is merely personal and does not run with the land (*r*). If, however, the covenantee retains some adjoining land and afterwards conveys to another the whole or part of the adjoining land, the benefit of the covenant will pass both at law and in equity to the grantee if it appears from the deed, or can be inferred from the circumstances, that it was the intention of the parties that it should so pass (*s*).

Where there  
is building  
scheme, cove-  
nants are  
mutually  
enforceable.

Where there is a building scheme for the sale of an estate in lots according to some defined plan, and it is part of the arrangement that all purchasers shall enter into restrictive covenants for their mutual benefit, the covenants, though expressed to be entered into with the vendor only, will be mutually enforceable in equity by and against all persons who come in as purchasers under the scheme (*t*), even if some of the

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(*q*) *Wilson v. Hart* (1866), 1 Ch. 463; 35 L. J. Ch. 569; *Nicoll v. Franning* (1881), 19 Ch. D. 258; 51 L. J. Ch. 166; *Re Nisbet and Potts*, 1906, 1 Ch. 386; 75 L. J. Ch. 238.

(*r*) *Formby v. Barker*, 1903, 2 Ch. 539; 72 L. J. Ch. 716.

(*s*) *Renals v. Cowlishaw* (1879), 11 Ch. D. 866; 48 L. J. Ch. 830; *Rogers v. Hosegood*, 1900, 2 Ch. 388; 69 L. J. Ch. 59; *Nalder, &c. Co. v. Harman* (1900), 83 L. T. 257; *Osborne v. Bradley*, 1903, 2 Ch. 416; 73 L. J. Ch. 49; *Hooper v. Bromet* (1904), 90 L. T. 234.

(*t*) See *Renals v. Cowlishaw* (1879), 11 Ch. D. 866; 48 L. J. Ch. 830; *Spicer v. Martin* (1888), 14 A. C. 12; 58 L. J. Ch. 309; *Elliston v. Reacher*, 1908, 2 Ch. 665; 78 L. J. Ch. 87.

lots are unsold at the first sale and are afterwards sold subject to the same conditions (*u*). The essential requisites of a building scheme are definite reciprocal rights and obligations extending over a defined area (*x*).

Whether there is a building scheme intended to be binding on all purchasers *inter se* is a question of fact depending on the language of the particulars and conditions of sale, and the other circumstances attending the sale, and it is a material circumstance whether the sale comprises the whole of the vendor's estate in the particular place. If it does, the presumption would be that the covenants are intended for the benefit of each of the purchasers as against the others. If, on the other hand, a part of the property is not included in the sale, the *primâ facie* inference would be that the covenants are for the protection of the vendor in respect of the retained land (*y*).

If a vendor prepares a plan of a building estate showing plots with houses marked on them, and an intending purchaser is shown that plan, and his agreement with regard to a plot of land purchased by him is on a printed form and contains restrictive stipulations, the purchaser is not entitled to assume that the whole estate is governed by a building scheme, nor that each plot shall be built on strictly in accordance with the indications on the plan, and shall be subject to the stipulations expressed in the printed form (*z*). Where the printed form of agreement provided that the conveyance should contain a covenant by the purchaser not to erect additional buildings "without the consent in writing of the vendor, his heirs, or assigns," it was held that so long as a substantial part of the

Question whether covenants are intended for mutual benefit of purchasers and vendor, or for vendor only, depends on the circumstances.

Building scheme not to be presumed from preparation of plan and printed form of agreement.

Covenant not to build without consent of vendor, his heirs or assigns, by whom enforceable.

(*u*) *Whatman v. Gibson* (1838), 9 Sim. 196; 7 L. J. Ch. 160; *Rowell v. Satchell*, 1903, 2 Ch. 212; 73 L. J. Ch. 20.

(*x*) *Reid v. Bickerstaff*, 1909, 2 Ch. 305; 78 L. J. Ch. 753; *Spicer v. Martin*, *sup.*

(*y*) *Nottingham, &c. Co. v. Butler* (1886), 16 Q. B. D. 778; 55 L. J. Q. B. 280; *Re Birmingham, &c. Co. and Allday*, 1893, 1 Ch. 342; 62 L. J. Ch. 90.

(*z*) *Tucker v. Fowles*, 1893, 1 Ch. 195; 62 L. J. Ch. 172; *Osborne v. Bradley*, 1903, 2 Ch. 446; 73 L. J. Ch. 49; *Whitehouse v. Hugh*, 1906, 2 Ch. 283; 75 L. J. Ch. 677.

building estate remained unsold, the only consent required was that of the vendor himself, or of the person deriving title under him to the unsold part (*a*).

The proper plan to be pursued to prevent all question.

In order to prevent all question, it is desirable, where it is intended that covenants of this kind shall be enforceable not only by the vendor, but also by all the purchasers *inter se*, either to have a general deed containing such covenants executed by the vendor and by each purchaser as he completes (*b*), or to insert in the conveyance to each purchaser not only covenants by him with the vendor, but also a declaration that he shall be entitled to the benefit of the similar covenants entered into by the other purchasers, and that, as regards any lots not already sold and conveyed, the same shall be subject to the like restrictions.

Notice of restrictive covenants by vendor should be indorsed on his title deed.

Where a vendor enters into restrictive covenants with intent to bind all future owners of the land affected thereby, the purchaser should see that notice of the deed containing the covenants is indorsed on some principal title deed retained by the vendor, so that subsequent purchasers from the vendor will have notice of them.

Equity will not interfere when there has been delay amounting to acquiescence.

Equity will refuse to interfere to prevent a breach of restrictive covenants where there has been a material alteration of the state of the property by the party himself or those under whom he claims, or there has been such delay on the part of the covenantee in taking proceedings as to amount to acquiescence (*c*); but change in the character of the neighbourhood is not in itself a sufficient defence (*d*).

When purchaser must covenant with vendor.

Whenever the vendor sells property subject to certain liabilities or covenants for the observance of which he is personally liable, and it is a part of the arrangement that the purchaser

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(*a*) *Everett v. Remington*, 1892, 3 Ch. 148; 61 L. J. Ch. 574.

(*b*) See *Elliston v. Reacher*, 1908, 2 Ch. 665; 78 L. J. Ch. 87, where the purchasers were bound though the deed was not actually executed.

(*c*) *Bedford v. British Museum* (1822), 2 Myl. & K. 552; 2 L. J. Ch. 129; *Sayers v. Collyer* (1884), 28 Ch. D. 103; 54 L. J. Ch. 1; *Knight v. Simmonds*, 1896, 2 Ch. 294; 65 L. J. Ch. 583. Waiver is assumed from long acquiescence: *Hepworth v. Pickles*, 1900, 1 Ch. 108; 69 L. J. Ch. 55.

(*d*) *Osborne v. Bradley*, 1903, 2 Ch. 446; 73 L. J. Ch. 49.

shall take the land subject to the same restrictions, the purchaser must enter into a covenant by way of indemnity with the vendor to abide by the same (*e*).

A company or public body purchasing land, whether by agreement or compulsion, under the powers of the L. C. C. Act, 1845, is not bound by a restrictive covenant, the enforcement of which would be inconsistent with the public purpose for which the purchase is made, but the covenantee is entitled to compensation under s. 68 of that Act (*f*).

Remedy of covenantee where land purchased under L. C. C. Act.

Mere registration of restrictive conditions under the Land Transfer Acts, 1875 and 1897, does not annex them to the land so as to make them enforceable against subsequent purchasers or the original vendor if there is no "building scheme" (*g*).

Registration.

Where land is exempted from undeveloped land duty on the ground that it is kept free of buildings in pursuance of a definite scheme, the land is impressed with a restrictive covenant against building without the consent of the Local Government Board (*h*).

Undeveloped land.

### *Implied Easements.*

A conveyance of land passes all easements legally appurtenant to it; and where the vendor is the owner of and retains the adjoining land, the conveyance will also pass by force of the Conv. Act, 1881, s. 6, or even without the aid of that section, such apparent and continuous easements over the land retained as are necessary to the convenient enjoyment of the property conveyed, and have been, and at the time of conveyance are, used and enjoyed by the vendor for the benefit of that property.

Conveyance to purchaser passes apparent and continuous easements

(*e*) *Moxhay v. Mander* (1847), 1 De G. & S. 708; *Re Poole and Clarke*, 1904, 2 Ch. 173; 73 L. J. Ch. 612. See also *Re Cooper and Cronshaw* (1904), 90 L. T. 258; *Harris v. Boots*, 1904, 2 Ch. 376; 73 L. J. Ch. 708.

(*f*) *Kirby v. Harrogate School Board*, 1896, 1 Ch. 437; 65 L. J. Ch. 376; 74 L. T. 6; *Long Eaton, &c. Co. v. Mid. Ry.*, 1902, 2 K. B. 574; 71 L. J. K. B. 837.

(*g*) *Willis v. St. John*, 1910, 1 Ch. 325; 79 L. J. Ch. 239.

(*h*) Fin. (1909-10) Act, 1910, s. 17 (3).

The doctrine is founded on the principle that a grantor cannot derogate from his own grant (*i*).

When an easement of light passes to a purchaser,

or a right of way over land retained by vendor.

In accordance with this doctrine, a conveyance to a purchaser of a house, which has windows overlooking land retained by the vendor, passes by implication an easement of light, which precludes the vendor from building on the land so as to obscure the light; and a conveyance of land, the ordinary and only convenient access to which is over the land retained by the vendor, passes a right of way over that land, although the way is not of necessity (*k*). But it is always a question depending on evidence whether there is an apparent easement or not. If the owner of two closes, A. and B., is in the habit of using a road over A. to go to B., this user is *prima facie* for his own convenience while owner of both, which convenience will cease to exist when the ownership is severed, and a right to use the road would not pass by a conveyance of close B. to a purchaser, unless it could be shown that there was no other reasonably convenient access thereto, or that there are other circumstances from which it may be inferred that the road was used as an appurtenant to B., and not as a mere incident of the joint ownership (*l*). And generally it may be said that in order to establish an apparent easement over land retained by a vendor for the benefit of property conveyed to a purchaser, it must be shown that the user on which the claim is founded has taken place under circumstances affording a reasonable expectation that it will be continued after the ownership is severed (*m*).

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(*i*) *Kay v. Orley* (1875), L. R. 10 Q. B. 360; 44 L. J. Q. B. 210; *Bayley v. G. W. Ry. Co.* (1884), 26 Ch. D. 434; *Broomfield v. Williams*, 1897, 1 Ch. 602; 66 L. J. Ch. 305; *Pollard v. Gtare*, 1901, 1 Ch. 834; 70 L. J. Ch. 404; *International Tea Stores Co. v. Hobbs*, 1903, 2 Ch. 165; 72 L. J. Ch. 543; Gale, 8th ed., 108 *et seq.*; Goddard, 7th ed., 146.

(*k*) *Brown v. Alabaster* (1887), 37 Ch. D. 490; 57 L. J. Ch. 255.

(*l*) *Thomson v. Waterlow* (1868), 6 Eq. 36; 37 L. J. Ch. 495; as explained in *Kay v. Orley*, *sup.*

(*m*) *Birmingham, &c. Banking Co. v. Ross* (1888), 38 Ch. D. 295; 57 L. J. Ch. 601. See also *Betts v. Pickfords*, 1906, 2 Ch. 87; 75 L. J. Ch. 483; *Morgan v. Fear*, 1907, A. C. 425; 76 L. J. Ch. 660.

As a general rule there is no implied reservation of an easement in favour of the grantor for the benefit of the property retained by him corresponding to that which arises in favour of the grantee for the benefit of the property conveyed, except in the case of an easement of necessity. If, therefore, an owner of a house, and of land overlooked by the house, sells and conveys the land, but retains the house, he cannot prevent the purchaser from building on the land so as to obstruct the light to the house(*u*). If, however, in the latter case the land and house had been sold contemporaneously to different purchasers (each purchaser being aware of the conveyance to the other), the purchaser of the house would be entitled to an easement of light as against the purchaser of the land (*v*). And the same rule applies to devises by will of the land and house to different persons (*p*), and to a partition (*q*).

No implied reservation of an easement to grantor.

An easement of necessity means an easement without which the property retained cannot be used at all, and not one merely necessary to its convenient enjoyment (*r*).

What is an easement of necessity.

SECT. V.—*Conveyances of land without mines, or of mines without surface, and the mutual rights and obligations of the owners of the mines and of the surface in such cases.*

A conveyance of land passes not only the surface, but also all mines and minerals under the surface, unless the contrary is expressed in the deed, or unless the conveyance is made under the provisions of some statute which expressly excludes them.

Conveyance of land passes *prima facie* the mines.

A grant or exception in a deed of “minerals,” or of “mines and minerals,” includes all such substances as can be got from

Meaning of “minerals” or “mines and minerals” in a grant or exception.

(*u*) *Wheeldon v. Burrows* (1879), 12 Ch. D. 31; *Ray v. Hazeldine*, 1904, 2 Ch. 17; 73 L. J. Ch. 537.

(*v*) *Allen v. Taylor* (1880), 16 Ch. D. 355; 50 L. J. Ch. 178.

(*p*) *Phillips v. Low*, 1892, 1 Ch. 47; 61 L. J. Ch. 44.

(*q*) *Nicholls v. N.* (1899), 81 L. T. 811.

(*r*) *Union L. Co. v. London G. D. Co.*, 1902, 2 Ch. 557; 71 L. J. Ch. 791; see also *Titchmarsh v. Royston Water Co.* (1899), 81 L. T. 673.

underneath the surface of the earth, and have a use and value of their own independent of and separable from the rest of the soil, without any reference to the mode of working them, unless the context or the nature of the transaction requires a more limited interpretation(s).

Meaning of  
"mines."

The word "mines" taken alone signifies primarily underground excavations for the purpose of getting minerals, but its meaning may be extended by the context to all strata or beds in which minerals lie, however workable(t). Thus, china clay underlying land purchased by a railway company and occupying only a small portion of the subsoil is a "mineral" within the meaning of s. 77 of the R. C. C. Act, 1845(n), but sandstone is not(x).

Whether an  
exception of  
mines carries  
the ownership  
of the strata  
or an ease-  
ment only, a  
question of  
construction.

It is a question of construction whether an exception of mines is an exception of the strata, so as to leave the grantor in the ownership of those strata as a separate tenement which he may use for any purpose he thinks fit, e.g., to make a road through them for the conveyance of the produce of adjoining mines(y), or an exception only of the minerals, in which case the grantor has a right to get the minerals, but not to use the strata in which they are for any other purpose(z).

Exception of  
minerals  
includes right  
to work them.

A grant or exception of minerals carries with it the right to work them by sinking pits and shafts and putting up the necessary machinery, and to enter upon and use so much of the surface as is necessary and reasonable for that purpose, but does not entitle the mine owner to destroy or seriously injure or let down the surface, unless such a power is expressly reserved(a).

(s) *Johnstone v. Crompton*, 1899, 2 Ch. 190; 68 L. J. Ch. 559.

(t) *Bell v. Wilson* (1866), 1 Ch. 303; 35 L. J. Ch. 337; *Greville v. Hemingway* (1902), 87 L. T. 413.

(n) *G. W. Ry. Co. v. Carpalla, &c. Co.*, 1910, A. C. 83; 79 L. J. Ch. 117.

(x) *N. British Ry. v. Budhill Coal, &c. Co.*, 1910, A. C. 116; 79 L. J. P. C. 31.

(y) *Hamilton v. Graham* (1871), 2 H. L. (Sc.) 166.

(z) *Ramsay v. Blair* (1876), 1 A. C. 701.

(a) *Hest v. Gill* (1872), 7 Ch. 699; 41 L. J. Ch. 761; and see *Hayles v. Pease*, 1899, 1 Ch. 567; 68 L. J. Ch. 222.

If the owner of land grants to another a right to get the minerals, this will not be deemed to confer an exclusive right, unless the language is clear and explicit. And when the right is not exclusive, the owner of the land has a right to work them, so long as he does not disturb the grantee in any working which he is carrying on at the time (*b*).

Grant of right to get minerals does not prevent owner of land from working them also.

Where the ownership of the mines is separate from that of the surface, *prima facie* the mine owner is bound to leave sufficient support for the surface, and a grant or reservation of express power to work and get the minerals, and for that purpose to sink shafts, &c., making compensation for damage to the surface, does not of itself relieve the mine owner from the obligation to support the surface, because sufficient effect may be given to the compensation clause by holding it to apply to damage caused by the sinking of the shafts and other surface works authorised by the deed (*c*). But if it appears clearly on the face of the instrument that the grant of the mines is intended to carry with it the right so to work them as to cause a subsidence, there is nothing illegal in such a grant, and it is in every case a question of construction whether this is or is not the intention of the deed (*d*). Thus, in a case where, on a grant of land for the erection of a cotton mill, there was an exception and reservation of all the mines and minerals, with power to take the same at pleasure, but without entering upon the surface, so that compensation be made for all damage to the buildings by the exercise of any of the excepted powers, it was held that the mine owner might work so as to injure the buildings, because, as he was restrained from entering on the surface, the damage contemplated by the compensation clause must be damage by subsidence (*e*).

Right of owner of surface to support from the subjacent or adjacent mines,

may be precluded by terms of deed.

(*b*) *Sutherland v. Heathcote*, 1 Ch. 475; 61 L. J. Ch. 248.

(*c*) *Butterknowle Colly. Co. v. Bishop Auckland, &c. Co.*, 1906, A. C. 305; 75 L. J. Ch. 541.

(*d*) *Rorbotham v. Wilson* (1860), 8 H. L. C. 348; 30 L. J. Q. B. 49.

(*e*) *Aspden v. Seddon* (1875), 10 Ch. 394; 44 L. J. Ch. 359; *Love v. Bell* (1884), 9 A. C. 286, 299; 53 L. J. Q. B. 257; see also *Butterley Co. v. New*

Lessee's  
liability for  
subsidence.

A lessee of mines or an owner of minerals is not liable to the owner of the surface for damage by subsidence happening after he entered into possession, but caused by the acts of a predecessor in title done before the date of such entry (*f*).

Tenant for life.

Under S. L. Act, 1882, s. 6, a tenant for life may grant a lease with power to let down the surface (*g*).

#### SECT. VI.—*Other matters relating to completion of purchase.*

As to out-  
standing legal  
estate.

The vendor is bound to get in at his own expense any outstanding legal estate (*gg*); but if it appears that a legal estate which has not been actually got in began to be outstanding many years ago the question arises whether it has not ceased to be subsisting under the operation of the R. P. Lim. Acts, 1833 and 1874. If the relation between the holders of the legal and beneficial estates has been that of trustee and *cestui que trust* upon an express trust, or of mortgagee and mortgagor, no length of possession by the beneficial owner will have barred the legal right of the legal owner, the case being within the exception at the end of s. 7 of the Act of 1833. But if the legal owner has not been an express trustee or mortgagee, or has ceased to be such, the beneficial owner will have been a tenant at will within the meaning of that section, and will have acquired a good legal title at the end of thirteen years from the time when the tenancy at will began (*h*). In a case where a legal mortgage was paid off but no reconveyance was executed, it was held that the mortgagee was neither an express trustee nor a mortgagee after the money was paid, hence that his legal

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*Hucknall Co.*, 1909, 1 Ch. 37; 78 L. J. Ch. 63; and see articles, 53 Sol. J. 42, 54 *ib.* 436.

(*f*) *Greenwell v. Low Beechburn Coal Co.*, 1897, 2 Q. B. 165; 66 L. J. Q. B. 643; *Hall v. Norfolk*, 1900, 2 Ch. 493; 69 L. J. Ch. 571.

(*g*) *Sitwell v. E. of Londesborough*, 1905, 1 Ch. 460; 74 L. J. Ch. 254; and see *Markham v. Paget*, 1908, 1 Ch. 697; 79 L. J. Ch. 451.

(*gg*) *Re Adams and Frost*, 1907, 1 Ch. 695; 76 L. J. Ch. 408.

(*h*) R. P. Lim. Acts, 1833, s. 7, and 1874, s. 1.

right was extinguished at the end of thirteen years from that time (i).

Independently of the operation of the above Acts, a conveyance of the legal estate will be presumed where there have been dealings by the equitable owner inconsistent with the supposition of the legal estate being outstanding, as where the property has been sold, mortgaged, and settled from time to time without any notice having been taken of the outstanding legal estate, or where the property has been dealt with in such a manner as to lead to the inference that the legal estate must have been at the time in the beneficial owner (k), or where the legal estate has been directed to be conveyed to a particular person at a particular time, and a long time has elapsed since the conveyance ought to have been made, and the person to whom it ought to have been made has been in possession the whole time (l).

When a conveyance of the legal estate will be presumed.

It was formerly the practice on a purchase, when it appeared that the property was subject to a term of years created for purposes which had become satisfied, to keep the term alive by assigning it to a trustee for the purchaser to attend the inheritance and protect it from mesne incumbrances. This practice was put an end to by the Satisfied Terms Act, 1845, which in effect enacts that (with an exception intended to protect existing interests) all terms of years which by express declaration or construction of law should on the 31st day of December, 1845, be attendant on the inheritance, or which becoming satisfied after that date should either by express declaration, or by construction of law, become attendant on the inheritance, should absolutely cease and determine. The Act extends to freeholds and such customary lands as will pass by deed, or deed and admittance, and not by surrender (m).

Satisfied terms.

Act for dispensing with their assignment.

A purchaser is not entitled to require that the conveyance be

Right of purchaser as to attestation of conveyance.

(i) *Sands to Thompson* (1883), 22 Ch. D. 614; 52 L. J. Ch. 406.

(k) *Noel v. Bewley* (1829), 3 Sim. 103; *Emery v. Grocock* (1821), 6 Madd. 54; see also *Re Bridgwater*, 1910, 2 Ch. 342.

(l) *Hillary v. Waller* (1806), 12 Ves. 239.

(m) *Ss.* 2, 3.

executed in his presence or in that of his solicitor as such, but he may at his own cost have its execution attested by some person appointed by him, who may, if he thinks fit, be his own solicitor (*u*).

Costs of conveyance.

Where there is no stipulation on the subject of expenses, the costs of the conveyance and of all matters relating thereto must be borne by the purchaser, but the expense attendant on the execution and examination of the deed by or on account of the conveying parties must be paid by the vendor (*o*). And in the absence of stipulation, on the purchase of a copyhold estate, the purchaser must pay the expense of the surrender and his admittance (*p*). In a case where it was stipulated that the purchaser should have proper surrenders at his expense, it was held that the fine on admittance of the heir of the vendor who had died after the contract was an extraordinary expense which must be borne by the vendor (*q*). Where the vendor agreed to surrender and assure the copyholds at his own cost, it was held that the vendor was not liable to pay the fine which became payable on the purchaser's admittance (*r*).

Costs of surrender of and admission to copyholds.

Expense of getting in incumbrances.

If the property is subject to incumbrances at the date of the contract, they must either be got in by a separate deed at the vendor's expense before the conveyance, or if they are released by the deed of conveyance, the expenses of the purchase deed, so far as they are increased by the concurrence of the incumbrancer in the same deed, may be thrown on the vendor (*s*). But the purchaser would not be entitled to throw such expense on the vendor when the mortgage debts are kept on foot for the purchaser's protection (*t*).

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(*u*) Conv. Act, 1881, s. 8. This enactment settles what was formerly an occasional subject of dispute: *Viney v. Chaplin* (1858), 2 De G. & J. 468; 27 L. J. Ch. 434; *Essex v. Daniell* (1875), 10 C. P. 538.

(*o*) Dart, 7th ed., 714; V. & P. Act, 1874, s. 2, r. 4.

(*p*) Sug., 14th ed., 562; Dart, 7th ed., 716.

(*q*) *Paramore v. Greenslade* (1853), 1 Sm. & Gif. 541; 23 L. J. Ch. 34.

(*r*) *Graham v. Sime* (1801), 1 East, 632.

(*s*) Sug., 14th ed., 448; *Recres v. Gill* (1838), 1 Beav. 375.

(*t*) Dart, 7th ed., 723, 724.

The usual cost of stamping a conveyance is borne by the purchaser, but the costs incidental to the increment value duty are borne by the vendor, though he may, it seems, arrange for the repayment thereof by the purchaser (*u*).

Stamps.  
Increment  
value duty.

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(*u*) Fin. (1909-10) Act, 1910, s. 4.

## CHAPTER IV.

### STAMPS (*a*).

Agreements. UNDER the Stamp Act, 1891, an agreement or any memorandum of an agreement, under hand only, and not otherwise specifically charged with any duty, whether the same be only evidence of a contract or obligatory upon the parties from its being a written instrument, is liable to a fixed duty of 6*d.*, subject to certain Exemptions. exemptions, of which it is only necessary here to mention the following, namely, an agreement or memorandum the matter whereof is not of the value of £5, and an agreement, letter, or memorandum made for or relating to the sale of any goods, wares, or merchandise (*b*).

Conveyances on sale. By the same Act (*c*), as amended by s. 73 of the Fin. (1909-10) Act, 1910, every conveyance or transfer on sale of any property (except Bank of England stock and certain colonial stocks) is liable to the following stamp duties:—

|  |   |    |    |
|--|---|----|----|
| Where the amount or value of the consideration for the sale does not exceed £5 . . . . . | £ | s. | d. |
|  | 0 | 1  | 0  |
| And where the same exceeds £5 and does not exceed £10                                    | 0 | 2  | 0  |
| “ “ 10 “ 15  | 0 | 3  | 0  |
| “ “ 15 “ 20  | 0 | 4  | 0  |
| “ “ 20 “ 25  | 0 | 5  | 0  |
| “ “ 25 “ 50  | 0 | 10 | 0  |
| “ “ 50 “ 75  | 0 | 15 | 0  |
| “ “ 75 “ 100   | 1 | 0  | 0  |
| “ “ 100 “ 125  | 1 | 5  | 0  |
| “ “ 125 “ 150  | 1 | 10 | 0  |

(*a*) As to stamps generally, see Alpe, 11th ed., and Highmore, 2nd ed.; notes will be found under the precedents where any difficulty as to the amount of the stamp arises.

(*b*) Stamp Act, 1891, s. 59; Sched. I., “Agreement or any Memorandum of an Agreement.” As to contract notes, see Fin. (1909-10) Act, 1910, ss. 77, 78.

(*c*) Sched. I., “Conveyance or Transfer on Sale,”

|   |  |  | £ | s. | d. |
|---|--|--|---|----|----|
| And where the same exceeds £150 and does not exceed £175  |  |  | 1 | 15 | 0  |
| „ „ 175 „ 200   |  |  | 2 | 0  | 0  |
| „ „ 200 „ 225   |  |  | 2 | 5  | 0  |
| „ „ 225 „ 250   |  |  | 2 | 10 | 0  |
| „ „ 250 „ 275   |  |  | 2 | 15 | 0  |
| „ „ 275 „ 300   |  |  | 3 | 0  | 0  |
| And where the consideration exceeds £300, then for every £50, and also for any fractional part of £50 of such amount or value . . . . . |  |  | 0 | 10 | 0  |

The Finance (1909-10) Act, 1910, also imposes the same duties on voluntary conveyances as defined in s. 74. Voluntary conveyance.

The increment value duty imposed by that Act is also made a stamp duty : s. 4. Increment value duty.

Where the consideration does not exceed £500, and the instrument contains a statement certifying that the conveyance does not form part of a larger transaction or a series of transactions, in respect of which the amount or aggregate amount of the consideration exceeds £500, the duties under the Stamp Act, 1891, only are payable, *i.e.*, one-half of the respective duties given above (*d*). Apparently the exemption does not apply to leases granted at a premium under £500 (*c*). Exception where consideration under £500.

In the following cases it was held that the transaction was not liable to duty as a conveyance on sale. *viz.* :—(1) Where personally was assigned to trustees in trust to sell, and out of the proceeds to pay themselves the debts owing to them, and then the debts due to the other creditors, and to pay the surplus to the assignor (*f*) ; (2) where a father conveyed property to his son in consideration of natural love, &c., and also of the provision which the son had that day made by bond of £1,500 for his sister's portion (*g*) ; (3) where by a marriage settlement the uncle of the husband agreed, in consideration of the portion advanced by the lady, to pay to the trustees for the use of the husband Dispositions of property not requiring *ad valorem* stamp.

(*d*) Fin. (1909-10) Act, 1910, s. 73.

(*e*) *Ib.*, s. 75.

(*f*) *Coates v. Perry* (1821), 3 Brod. & B. 48.

(*g*) *Denn v. Diamond* (1825), 4 B. & C. 243.

and wife during their joint lives an annuity of £800 (*h*) ; (4) where an asphalte company purported, in consideration of a sum of money, to grant an exclusive licence to sell asphalte within a limited area (*i*) ; (5) a release of a right to work coal in consideration of a sum of money (*k*).

Dispositions  
requiring  
*ad valorem*  
stamp as con-  
veyances on  
sale.

A contract for or conveyance on sale of a policy of assurance (*m*), or of the goodwill of a business (*n*), or of a share in a foreign patent (*o*), requires an *ad valorem* stamp ; so does a deed whereby a retiring partner assigns his share of the partnership property to the other partners in consideration of a sum of money paid to him as the value of such share (*p*). And in a case where eight persons constituting a partnership firm formed themselves into a limited company, all the shares of which were to be allotted to themselves in proportion to their shares in the partnership, and then by deed the eight partners conveyed the real estate and trade marks of the firm to the company, it was held that the transaction was a sale and that the deed required an *ad valorem* stamp accordingly, and that it made no difference that the parties were also the persons who constituted the company (*q*). The fact that a transaction is by way of family arrangement does not necessarily preclude its being treated as a conveyance on sale (*r*).

Revenue  
Act, 1909, s. 7.

The Revenue Act, 1909, s. 7, repeals s. 59 (1) of the Stamp Act, 1891, in so far as that section is limited to contracts made in the United Kingdom.

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(*h*) *Massy v. Nanney* (1837), 3 Bing. N. C. 478 ; 6 L. J. C. P. 185.

(*i*) *Limmer Asphalte, &c. Co. v. I. R. C.* (1872), L. R. 7 Ex. 211 ; 41 L. J. Ex. 106.

(*k*) *G. N. Ry. Co. v. I. R. C.*, 1901, 1 K. B. 416 ; 70 L. J. K. B. 336. See also *Re Richard and G. W. Ry. Co.*, 1905, 1 K. B. 68, 73 ; 74 L. J. K. B. 9.

(*m*) *Caldwell v. Dawson* (1850), 5 Ex. Rep. 1.

(*n*) *Danubian Sugar Factories v. I. R. C.*, 1901, 1 K. B. 245, 250 ; 70 L. J. K. B. 211.

(*o*) *Smelting Co. of Australia v. I. R. C.*, 1897, 1 Q. B. 175 ; 66 L. J. Q. B. 137 ; Revenue Act, 1909, s. 7.

(*p*) *Christie v. I. R. C.* (1866), L. R. 2 Ex. 46 ; 36 L. J. Ex. 11 ; *Phillips v. I. R. C.* (1867), L. R. 2 Ex. 399 ; 36 L. J. Ex. 199.

(*q*) *Foster v. I. R. C.*, 1894, 1 Q. B. 516 ; 63 L. J. Q. B. 173.

(*r*) *Marquis of Bristol v. I. R. C.*, 1901, 2 K. B. 336 ; 70 L. J. K. B. 759.

Under the Finance Act, 1898, s. 6, a conveyance on sale includes a foreclosure order (s) ; the section confirms the decision in *Huntington v. I. R. C.* (t).

"Conveyance on sale" includes foreclosure order

A covenant by a purchaser of leasehold property to pay the rent reserved or, if apportioned, the apportioned part, is not part of the consideration for the purpose of calculating the *ad valorem* duty (u) ; but where freehold land subject to tithe was sold in lots and the conveyance contained a covenant by the purchaser to pay to the vendor the annual sum of one shilling and a covenant by the vendor to pay the whole tithe, it was held that the instrument was liable to an *ad valorem* duty in respect of the periodical payment of one shilling as well as of the purchase-money (v).

Consideration, how ascertained for purpose of duty.

A periodical payment may be chargeable under the Act even though such payment may be contingent on an uncertain event, e.g., sufficiency of profits (y).

Periodical payments.

The Finance Act, 1900, s. 10, provides that :—

A conveyance on sale made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and in further consideration of a covenant by the purchaser to make, or of his having previously made, any substantial improvement of or addition to the property conveyed to him, or of any covenant relating to the subject-matter of the conveyance, is not chargeable, and shall be deemed not to have been chargeable, with any duty in respect of such further consideration.

No further stamp duty in respect of covenant to improve, &c

If the instrument is a compound of a purchase and a mortgage, the deed must be stamped with the proper *ad valorem* duties, as on a purchase and mortgage for the specified sums : hence the transaction is nearly always carried out by separate instruments.

Compound of purchase and mortgage.

Where property is sold subject to a mortgage the duty is *ad valorem*, as on a conveyance on sale, on the aggregate amount of

Sale of equity of redemption

(s) *I. R. C. v. Tod*, 1898, A. C. 399 ; 67 L. J. P. C. 42 ; *Re Lovell and Collard*, 1907, 1 Ch. 249 ; 76 L. J. Ch. 246.

(t) 1896, 1 Q. B. 422 ; 65 L. J. Q. B. 297.

(u) *Swayne v. I. R. C.*, 1900, 1 Q. B. 172 ; 69 L. J. Q. B. 63.

(v) *Martin v. I. R. C.* (1901), 91 L. T. 453.

(y) *Underground Electric Rys. v. I. R. C.*, 1906, A. C. 21 ; 75 L. J. K. B. 117.

the mortgage debt (including interest, if any, then due) and the purchase-money (z).

Separate deed of covenant.

Any separate deed of covenant (not *being an instrument chargeable with ad valorem duty as a conveyance on sale or mortgage*), made on the sale or mortgage of any property, and relating solely to the conveyance or enjoyment of, or the title to, the property sold or mortgaged, or to the production of the muniments of title relating thereto, or to all or any of the matters aforesaid, is chargeable with a duty equal to the *ad valorem* duty on the consideration or mortgage money, where the *ad valorem* duty shall not exceed 10s, and in any other case with a duty of 10s. (a).

Practice as to stamping contracts within s. 59.

Having regard to s. 59 (5) of the Stamp Act, 1891, the usual practice as to stamping agreements for sale which come within that section, and which are intended to be carried into effect by a subsequent conveyance or transfer, is to stamp the agreement with the fixed duty of 6*d.* Care must be taken to get the conveyance or transfer executed within six months after the date of the agreement, if possible; and if this cannot be done, the solicitor for the purchaser must be prepared to satisfy the Commissioners that there has been no unreasonable delay in completion.

Adhesive agreement stamp.

The duty of 6*d.* upon an agreement may be denoted by an adhesive stamp, which is to be cancelled by the person who first executes it (b).

Stamp on purchase of several lots at auction.

A purchaser of several lots at an auction is considered to have entered into an equal number of agreements for the purchase of the same lots, so that the agreement must bear as many stamps as there are lots, assuming that the purchase-money for each lot amounts to £5 (c). But the value of the lots must be taken separately; so that if the purchase-money for no single lot amounts to £5, the agreement would not be chargeable with any stamp.

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(z) Stamp Act, 1891, s. 57; Alpe, 11th ed., 114; Highmore, 2nd ed., 134.

(a) Schedule, under the head "Covenant."

(b) S. 22; Alpe, 11th ed., 51; Highmore, 2nd ed., 81.

(c) *James v. Shore* (1816), 1 Stark. 426; *Watling v. Horwood* (1848), 12 Jur. 48.

If the agreement consist of several letters, it is sufficient to stamp one (*d*).

The duplicate or counterpart of an instrument charged with duty must be stamped with the same duty as the original instrument where the duty does not amount to 5s., and in any other case with a duty of 5s. Sect. 72 of the Act of 1891 provides that:—

The duplicate or counterpart of an instrument chargeable with duty (except the counterpart of an instrument chargeable as a lease, such counterpart not being executed by or on behalf of any lessor or grantor), is not to be deemed duly stamped unless it is stamped as an original instrument, or unless it appears by some stamp impressed thereon that the full and proper duty has been paid upon the original instrument of which it is the duplicate or counterpart.

Subject to such regulations as the Commissioners may think fit to make, they may be required by any person to express their opinion with reference to any executed instrument: (1) Whether it is chargeable with any duty; (2) with what amount of duty it is chargeable. If the Commissioners are of opinion that the instrument is not chargeable with duty, it may be stamped with a particular stamp denoting that it is not so chargeable. If they are of opinion that it is chargeable with duty, they are to assess the duty with which in their opinion it is chargeable and when the instrument is stamped in accordance with the assessment it may be stamped with a particular stamp denoting that it is duly stamped (*e*). Any person dissatisfied with the assessment of the Commissioners may within twenty-one days after the assessment appeal against the assessment to the High Court (*f*).

Opinion of Commissioners as to sufficiency of stamp.  
Adjudication stamps.

Sect. 15 of the Act of 1891, as amended by the Fin. (1909-10) Act, 1910, s. 74 (3), provides for the stamping after execution of certain documents and for the penalties for omitting to stamp the same within due time.

Unstamped instrument.

Until an instrument is properly stamped, it cannot be given in evidence except in criminal cases. But if the instrument is one which may legally be stamped after the execution thereof, the officer of the Court is empowered to receive and give a receipt for

Production of documents as evidence.

(*d*) *Steal v. Liddard* (1823), 1 Bing. 196; 1 L. J. (O. S.) C. P. 52.

(*e*) Stamp Act, 1891, s. 12 (3) (4); see Fin. (1909-10) Act, 1910, s. 74 (2).

(*f*) Stamp Act, 1891, s. 13; Highmore, 2nd ed., 61.

the unpaid duty, and the penalty required by the statute, and a further sum of £1. And on this being done the instrument will be admitted in evidence (*g*).

Registrar's  
duty as to  
stamps.

The Registrar will not complete a transaction under the L. T. Acts unless the stamp duty has been paid: L. T. R., rr. 123—125.

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(*g*) S. 14; Highmore, 2nd ed., 62-68. See *Maynard v. Consolid. Kent Collieries*, 1903, 2 K. B. 121; 72 L. J. K. B. 681.

# DIVISION I.

## CONDITIONS OF SALE AND CONTRACTS FOR SALE.

### PART I.

#### FORMS OF SPECIAL CONDITIONS OF SALE (a).

##### LIST OF FORMS OF SPECIAL CONDITIONS OF SALE.

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(a) These forms are for use with Precedent I. of General Conditions of Sale by Auction, and with the Precedents of Agreements for Sale. Some of them may also be required in connexion with the General Conditions of Sale by the Court.

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## SECTION I.

*As to the Auction, Deposit, Taking Possession, and Valuations.*

1. THE Vendor reserves the right to offer the property for sale either in one Lot or in the several Lots mentioned in the Particulars, or to offer for sale any two or more of such Lots together, and, after having failed to dispose of the property in manner aforesaid, to offer the property for sale in any other manner he may think fit, and in every case each bidder shall abide by his bidding, and the highest bidder in every case shall be the Purchaser. Mode of sale.

2. THE [Each] Purchaser shall at the close of the sale to him pay down a deposit of — per cent. on the amount of his purchase-money and sign an agreement in the form subjoined to these conditions for completion of his purchase according to these conditions, and when he has accepted the title he shall, under an order for the purpose to be obtained by and at the expense of the Vendor, pay as part of his purchase-money the sum required to be paid into Court for the purpose of obtaining under s. 5 of the Conveyancing and Law of Property Act, 1881 the discharge of the property from certain incumbrances, and shall pay the balance of his purchase-money, &c. (*continue as in General Condition 3 of Precedent L., p. 213, inf.*). Discharge of incumbrances by payment into Court under s. 5 of the Conv. Act, 1881 (*aa*).

2A. THE auctioneer [*or the Vendor's solicitors*] shall on receipt of the deposit pay the same into the — Bank, to the joint account of two responsible persons as stakeholders, one to be nominated by the Vendor and the other by the Purchaser [*or otherwise as may be arranged*], the same to be at the risk of the Purchaser, who shall be entitled on completion to any interest which may have been allowed thereon by the Bank (*b*). Payment of deposit to stakeholders appointed by the parties.

3. THE [Each] purchaser may take possession of the property [the Lot purchased by him] before the actual completion of the purchase upon paying to the Vendor one half of the amount of his purchase-money [the amount previously paid as a deposit Power for Purchaser to take possession before completion.

(*aa*) See notes to Form No. 160 and *cf.* Form No. 137.

(*b*) See *Ellis v. Goulton*, 1893, 1 Q. B. 350; 62 L. J. Q. B. 232.

being taken into account] as a [further] deposit and in part payment of his purchase-money, but such taking possession shall not be deemed to be an acceptance by the [a] Purchaser of the Vendor's title (c), nor a waiver of the right to make requisitions on and take objections to the title, and the [each] Purchaser who takes possession shall pending completion of the purchase and up to the date fixed for completion keep the property in proper repair and condition and pay all outgoings and expenses in respect of the same, and shall, in the event of the sale being rescinded, forthwith re-deliver the property to the Vendor in proper repair and condition, and the Vendor shall repay to the Purchaser whose contract is so rescinded his deposit, without interest thereon (d).

Timber [and fixtures] at a valuation.

4. THE [Each] Purchaser shall, in addition to his purchase-money, [to the amount of his bidding at the sale (e)] pay for [the fixtures referred to in the particulars and for] all timber (f) and timber-like trees, tellers, pollards, saplings, and plantations (if any) down to 1s. per stick inclusive, and underwood down to the stem, according to a valuation (g) to be made in manner following—(that is to say), each party (Vendor and Purchaser), or their respective solicitors, shall, within twenty-one days after [the master's certificate has become binding (h)] the sale, appoint by writing one person as valuer, and give notice in writing to the other party of the name and address of the person so appointed, and the two persons so appointed shall make the valuation, but shall before they commence

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(c) As to the effect of a purchaser taking possession in the absence of any stipulation, see Dissertation, p. 50, *sup.*; Dart, 7th ed., 512—514.

Purchaser taking possession before completion.

(d) If a purchaser retains possession after the day fixed for completion without causing deterioration to the property, the Court, in an action by the vendor, will order the purchaser to elect whether he will give up possession or pay the balance of his purchase-money, with interest from the day fixed for completion: *Greenwood v. Turner*, 1891, 2 Ch. 144; 60 L. J. Ch. 351; see also *Cook v. Andrews*, 1897, 1 Ch. 266; 66 L. J. Ch. 137.

(e) These words will only be used on a sale under the Court.

(f) For definition of timber, see Dart, 7th ed., 145; and for fixtures, *ib.* 559. In the event of the property being of copyhold tenure the purchaser should, by the condition, be bound to assume that the lord has no interest in the timber.

(g) As to the difference between a mere valuation and a submission to arbitration, see *Turner v. Goulden* (1873), L. R. 9 C. P. 57; 43 L. J. C. P. 60; *Re Dardly and Hartcup* (1885), 15 Q. B. D. 426; 54 L. J. Q. B. 574; *Re Carus-Wilson and Greene* (1886), 18 Q. B. D. 7; 56 L. J. Q. B. 530; *Re Hammond and Waterton* (1890), 62 L. T. 808; Dart, 7th ed., 244.

(h) These words will only be used on a sale under the Court.

their duty appoint an umpire by writing, and the decision of the two valuers if they agree, or of their umpire if they disagree, shall be final, and in case the [any] Purchaser shall neglect or refuse to appoint a valuer and to give notice thereof in manner and within the time above mentioned, the valuer appointed by the Vendor alone shall make the valuation, and his valuation shall be final. In the following conditions (i) the words "the balance of his purchase-money" include the amount of the aforesaid valuation.

5. In addition to the amount of his bidding at the sale the [each] Purchaser shall pay the amount stated in the particulars for the timber and other trees [and fixtures] on the property [the Lot purchased by him]. In the following conditions the words "the balance of his purchase-money" include the amount of the aforesaid valuation.

Timber [and fixtures], when valuation stated in particulars.

6. In the case of lands the tenancy of which is stated in the particulars to expire at —, possession will be given to the Purchaser on completion of the purchase thereof, but the Vendor in giving such possession shall be treated as an outgoing tenant, and the Purchaser shall be treated as an incoming tenant, and shall accordingly pay to the Vendor all sums properly payable by an incoming tenant for growing crops, tillages, dead stock, and other matters, whether by statute or according to the custom of the district, the amount so payable to be paid to the Vendor at the time of completion, and to be ascertained by a valuation (j) to be made in accordance with the provisions of the Agricultural Holdings Act, 1908 [or in manner following—(that is to say)] [*continue as in Form No. 4*].

Where the vendor is in possession, and is to be treated as a tenant.

7. THE Vendor reserves the right to cut and sell all growing crops, and the right to the use of the grazing, and the right to the garden fruits and crops up to the time when under these conditions the Purchaser shall be let into possession [and also the right to dig up and remove the crops of — at any time before the — day of — next] (k).

Where property sold with possession and right to cut crops, &c., reserved to vendor.

8. In addition to the amount of his bidding at the sale the [each] Purchaser shall pay for the tenant's fixtures (l) in and

Tenant's fixtures.

(i) In a sale by private contract say "In this agreement."

(j) See note (y) to Form No. 4, *sup.* Where no deposit is paid on the sale of chattels it seems that the contract should be registered as a bill of sale under the Sale of Goods Act, 1893: *Re Roberts* (1887), 36 Ch. D. 196; 56 L. J. Ch. 952.

Bill of sale.

(k) As to the object of this condition, see Dart, 7th ed., 144.

(l) For definition of fixtures, see Dart, 7th ed., 559.

about the property [Lot purchased by him] at a valuation (*m*) to be made in manner following (that is to say): the Vendor shall appoint one valuer, and the [each] Purchaser shall appoint another valuer, and each party shall make such appointment by writing and give notice thereof to the other party within fourteen days from the day of sale. The valuers thus appointed shall, before they proceed to act, appoint by writing an umpire, and the two valuers, or (if they disagree) their umpire, shall make the valuation. If either party shall neglect to appoint a valuer, or to give notice of such appointment to the other party, within the time aforesaid, the valuer appointed by the other party shall make a final valuation alone. In the following conditions the words "the balance of his purchase-money" include the amount of the aforesaid valuation.

On sale of a  
public-house.  
Valuation of  
fixtures, stock  
in trade, &c.

9. THE Purchaser shall take at a fair valuation, to be made by two appraisers, one to be appointed by the Vendor and the other by the Purchaser, or their umpire, who shall be chosen in the usual manner, all the tenant's and trade fixtures, fittings, furniture and effects (other than stock in trade) on the property which the Vendor may desire to sell, notwithstanding any description thereof in the particulars, and the decision of the appraisers or umpire as to what are tenant's and trade fixtures and fittings shall be conclusive. The Purchaser shall also take so much of the stock in trade upon the property as shall not have been sold or disposed of at the time of completion of the purchase, according to the valuation of two gaugers, one to be appointed by the Vendor and the other by the Purchaser, or their umpire, who shall be chosen in the usual manner, and the Purchaser shall pay the amount of the aforesaid valuations, and shall also pay for the unexpired time in the licences (*n*) and insurances relating to the property and the effects therein, and all outgoing at the time of the completion of the purchase. If the Purchaser shall neglect to appoint an appraiser for three days, after being required so to do, or to appoint a gauger on request, or if the appraiser or gauger appointed by the Purchaser shall neglect or refuse to

(*m*) See note (*g*), Form No. 4, *sup*.

Public-house  
licence

(*n*) It seems that non-disclosure of the fact that the licence has been indorsed is not an omission so material as to entitle the purchaser to rescind: *Re Ward and Jordan*, 1902, 1 Ir. R. 73. The rights as between the vendor and purchaser in respect of the licence until completion are defined in *Tadcaster Tower Brewery Co. v. Wilson*, 1897, 1 Ch. 705; 66 L. J. Ch. 402. The purchaser must not carry on business until the licence is transferred: *Barnard v. Barton*, 1906, 1 K. B. 357; 75 L. J. K. B. 326.

nominate an umpire on request, or to proceed in the valuation, the appraiser or gauger appointed by the Vendor shall make the valuation alone, and the same shall be binding on the Purchaser (o).

10. If the balance of the purchase and valuation money (p) [for Lot —] shall be paid before the — day of — next the Purchaser [of that Lot] shall be let into possession of the property as a going concern on that day, and on and from that day shall become liable to discharge and shall discharge all wages and other outgoings connected with the business, and shall keep indemnified the Vendor against all liabilities and outgoings of the business as from that day; but if for any reason possession [of Lot —] is not delivered to the Purchaser on the day aforesaid, the business on and from that day shall be carried on by or under the direction of the Vendor, at the risk and cost but for the benefit of the Purchaser thereof until possession shall be delivered to him, and any question which may arise as to the balance due to or from the Purchaser in respect of the business, and any other question which may arise in reference to carrying on the same, shall be settled or decided [*in case of sale by the Court* by the judge at Chambers *or*] by the arbitration of two referees, one to be appointed by the Vendor and the other by the Purchaser, and their umpire in accordance with the provisions of the Arbitration Act, 1889.

Sale of business as a going concern.

11. THE Purchaser shall forthwith go into occupation of the property, and remain in such occupation as tenant of the Vendor until the date fixed for completion at the yearly rent of £ —, free from deductions except landlord's property tax and tithe rent-charge, the said rent to be payable on the — day of — in each year, and the first of such payments shall be made on the — day of —. Provided that any excess of the yearly rent over £4 per cent. per annum on the balance of purchase-money for the time being remaining unpaid shall be applied in or towards reduction of such balance, and the Purchaser may at any time before the date fixed for completion, on giving to the Vendor one calendar month's notice in writing, pay the whole of the

Sale of shop and business where the purchase-money is to be paid by instalments, the Purchaser in the meantime remaining the tenant of the Vendor and conducting the business under his supervision.

(o) Where a public-house is sold as a going concern time is of the essence of the contract: *Charles v. Gale* (1871), L. R. 7 Ch. at p. 16; 41 L. J. Ch. 14; and see *Weston v. Savage* (1879), 10 Ch. D. 736; 48 L. J. Ch. 239; *Warren v. Moore* (1898), 14 T. L. R. 497; *Farnham Brewery Co. v. Hunt* (1893), 68 L. T. 440.

(p) This will include the valuation money for plant, stock in trade, book debts, &c.

said balance with interest thereon at the rate of £4 per cent. per annum. And upon such payment the said tenancy and the payment of rent shall cease and a proper conveyance shall be executed to the Purchaser, or as he may direct. But until payment of the whole of the said balance and interest the business shall be carried on in all respects as heretofore, the Vendor retaining the possession or direction thereof as though the Purchaser were his agent.

## SECTION II.

### *As to the Commencement of Title and the Contents of the Abstract.*

Commence-  
ment with a  
Will: no evi-  
dence of seisin.

12. THE abstract of title shall commence [as to Lot — ] with the Will, dated the — day of —, 18—, of a testator who died on the — day of —, and it shall be assumed (*q*) that the testator was entitled in fee simple in possession free from incumbrances at the date of [his Will and thenceforth up to (*r*)] his death, and no evidence on this point shall be required.

Commence-  
ment with a  
Will: declara-  
tion as to  
seisin.

13. THE abstract of title shall commence [as to Lot — ] with a Will dated in the year 18—, of a testator who died in the year 18—, and a statutory declaration will be furnished if required at the expense of the Purchaser, that the property [Lot — ] has for the last twelve years or upwards been enjoyed in accordance with the title deduced under such Will, and upon this evidence it shall be assumed, &c. [*continue as in last condition*].

Title to consist  
of Will and  
appointments  
of new trustees  
containing  
general description  
only.

14. THE Vendors are the trustees of the Will of a testator who died in the year —. The title shall consist of the said Will (which contained a devise of the property on trust for sale (*s*)) and of several appointments of new trustees thereof, in which appointments as well as in the said Will the real estate of the testator is referred to by a general description, and there is no

(*q*) The vendor must, of course, only ask the purchaser to assume what he believes to be true: Dart, 7th ed., 166.

Commence-  
ment of title  
with Will.

(*r*) The words in brackets are not required where the Will is dated after 1837: see Wills Act, 1837, s. 24. If the Will mentions the property, the condition may state that the Will "specifically devises the property," or "contains a general devise of all the testator's property in the parish of," &c. A devise of this kind affords some evidence of the testator's title. Or it may be stated that the seisin is recited in a subsequent document.

(*s*) If the property is devised in settlement, or if there is a future trust for sale (S. L. Act, 1890, s. 16), title should be made by the tenant for life or person having the powers of a tenant for life. During a minority the trustees act on behalf of the tenant for life: S. L. Act, 1882, s. 60.

specific description of the property now offered for sale. A statutory declaration will be furnished to the Purchaser at his own expense that the property has been held consistently with the title derived under the Will for the last twelve years and upwards, and such declaration shall be accepted by the Purchaser as sufficient evidence that the testator was at his death seised in fee simple in possession of the property, free from incumbrances.

Seisin to be evidenced by declaration.

15. THE abstract of title to the several Lots shall commence with counterparts of the leases by which the ground rents were respectively reserved as mentioned in the particulars, and the Purchaser shall assume that the person or persons by whom each lease was granted was or were seised in fee simple in possession free from incumbrances of the property comprised therein at the date thereof (*t*), but a statutory declaration will be furnished, if required, at the expense of each Purchaser that the Lot or Lots purchased by him has or have for the last twelve years and upwards been enjoyed in accordance with the title shown thereto.

Title to freehold ground rents.

16. THE abstract of title to the tithe rentcharge included in Lot — shall commence with an Indenture dated, &c., being &c., and the Purchaser shall not require the production, or any copy or abstract, of the original grant of the rectory and tithes by the Crown (*u*).

Title to tithe rentcharge.

17. THE property offered for sale forms part of the endowment of the charity known as —, and the sale is made subject to an order by the Board of Charity Commissioners for England and Wales being obtained within six calendar months from the date of the sale consenting thereto (*x*). The legal estate is vested in the official trustee of charity lands, and the Vendors are selling as the trustees of the charity, appointed under a scheme of the said Board, which scheme was approved by her late Majesty in Council on the — day of —, 18—. The Vendors will deliver to the [each] Purchaser an abstract of title to the property

On sale of charity land.

(*t*) This condition must not be used unless it is impracticable to produce a document of title relating to the freehold reversion dated before the creation of the leases. As a rule the commencement will be fixed as if the freeholds were not subject to any lease.

(*u*) In the absence of a condition, the title must commence with the original grant (intermediate instruments being omitted) until the commencement of a good forty years' title: *Dart*, 7th ed., 331.

Tithe rentcharge.

(*x*) Application should be made to the Board for instructions before the land is put up for sale. If the endowment is one held solely for educational purposes the Board of Education should be substituted for the Board of Charity Commissioners: see Board of Education Act, 1899. The powers of

Board of Education.

sold, commencing with a Will dated, &c., of a testator who died in the year —, but the Vendors shall not be bound to furnish any evidence of the seisin of the testator nor to produce any deeds or evidence of their title other than official copies of the said scheme and the original order for sale to be made by the said Board, and also at the expense of the Purchaser requiring it a statutory declaration to be made by some competent person that the property sold was included in the said scheme, and has been in the possession of the Vendors or their predecessors in title as trustees of the said charity for upwards of — years.

On sale under the City of London Parochial Charities Act, 1883, the sale being made under an order of the Charity Commissioners.

18. THE property offered for sale forms part of the Charity known as —, and the sale is made subject to an order by the Board of Charity Commissioners for England and Wales, being obtained within six calendar months from the date of the sale consenting thereto. The legal estate in the property is vested in the official trustee of charity lands, and the Vendors are selling as the trustees of the said Charity. The Vendors were incorporated under section 48 of the City of London Parochial Charities Act, 1883 (*y*), and were constituted managing trustees under the provisions of a scheme of the said Board made in pursuance of that Act, which scheme was approved by her late Majesty in Council on the — day of — 18—. The Vendors will deliver to each Purchaser an abstract of title to the property sold, commencing with a Will dated, &c., of a testator who died in the year —, but the Vendors shall not be bound to furnish any evidence of the seisin of the testator nor to produce any deeds or evidence of their title other than official copies of the said scheme and of the statement therein referred to and the original order for sale by the said Board, and also at the cost of the Purchaser requiring the same a statutory declaration to be made by some competent person that the property sold was included in the said scheme and statement and in the said order and has been in the possession of the Vendors or their predecessors in title, the trustees of the united Parishes (*z*) of —, for upwards of — years, and is believed to have been held by them or their predecessors since the — day of —, 18—, the date of the death of the testator.

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the Charity Commissioners so far as they related to educational endowments were transferred to the Board of Education by Orders in Council dated 7th August, 1900, 24th July, 1901, and 11th August, 1902.

(*y*) Repealed by the Statute Law Revision Act, 1898.

(*z*) The parishes to which the Act applied are mentioned in the schedule to the Act.

19. The property forms part of the Glebe (*a*) and endowment of the Benefice of the Parish of — in the County of —, and was by an Indenture [of Bargain and Sale] dated the — day of — conveyed to the Rev. —, the then Rector of the said Parish, and his successors, Rectors of the said Parish. [Such Indenture was duly enrolled, and the record thereof appears in the records of the Record Office. The Purchaser shall not call for or be entitled to demand production of the original of such conveyance, but shall be satisfied as to the contents thereof by an inspection of the aforesaid record.] The sale shall be carried out in all respects in accordance with the provisions of the Glebe Lands Act, 1888, and the rules thereunder, and the Vendor will forthwith at his own cost serve all the notices (*b*) thereby required. This sale is conditional on the approval thereof by the Board of Agriculture and Fisheries (*c*) being obtained, and the Vendor shall forthwith apply in the manner prescribed by the Rules made in pursuance of the Glebe Lands Act, 1888, to the said Board to approve the sale and shall use his best endeavours to procure such approval, and in case such approval shall not be obtained to this sale under these conditions (with or without such variations as may be assented to by both parties) within three calendar months from the date of the sale or such other extended time as may be agreed upon by the Vendor and Purchaser, then and in such case the sale shall be void. But the Purchaser shall on failure to obtain such approval pay the charges, costs, expenses and fees incurred by the Vendor in or about the aforesaid application. In case the said Board shall (with or without such variation as aforesaid) approve the sale, then and in such case the Vendor shall furnish to the Purchaser a copy of the Order sanctioning the sale to enable the conveyance

Glebe lands  
under the Act  
of 1888.

*a*) It should be ascertained that the property does not come within the exceptions mentioned in ss. 2 and 5 of the Glebe Lands Act, 1888. For a definition of glebe land, see s. 12.

Glebe Lands  
Act, 1888.

*b*) Notice must be served on the bishop and the patron, before the application to the Board of Agriculture and Fisheries can be made; notice must also be served on the parishioners and, unless the Board otherwise direct, on the clerk to the County Council and the clerk to the parish, borough or urban district council: Sale of Glebe Land Rules, 1909, 1909, W. N. Pt. II., 317. The notices must be in the Forms given in the Rules.

Notices re-  
quired on sale  
under the Act.

*c*) The Board take the place of the Land Commissioners (see Board of Agriculture Act, 1889), and their jurisdiction is extended to fisheries by the Act of 1903.

to be prepared, and on completion shall hand over the Order to the Purchaser.

Sale under  
the  
Ecclesiastical  
Leasing Acts.

20. THE property forms part of the — lands (*d*) of the Vicarage and Parish Church of —, and the sale shall be carried out in all respects in accordance with the provisions of the Ecclesiastical Leasing Acts (*e*), and the Vendor will at his own cost serve notice (*f*) of the intended sale on the Bishop of the diocese. This sale is conditional on the approval (*g*) thereof by the Ecclesiastical Commissioners (*g*) and on the consent thereto by the patrons (*h*) of the benefice being obtained, and the Vendor will forthwith apply for and use his best endeavours to procure such approval and consent, and in case such approval shall not be obtained to this sale under these conditions (with or without such variations as may be assented to by both parties) within three calendar months from the date of the sale or such other extended time as may be agreed upon by the Vendor and Purchaser, then and in such case the sale shall be void [and the purchaser shall forthwith return all abstracts and other papers in his possession and shall not be entitled to any claim for damages or otherwise (*i*)]. The Vendor, in accordance with the usual practice, shall not be required to give any covenant for title express or implied.

With Inclosure  
Award.

21. THE abstract of title to Lot — shall commence with the — Inclosure Award dated, &c., under which the same was allotted to —, and the Purchaser shall not be entitled to call for the title to the property, in respect of which such allotment

The Eccle-  
siastical  
Leasing Acts.

(*d*) Except in cases to which the Act does not apply, sales are now generally made under the Glebe Lands Act, 1888. It should be ascertained that the property does not come within the exceptions mentioned in s. 9 of the Ecclesiastical Leasing Act, 1842.

(*e*) This is the short title: Ecclesiastical Leasing Act, 1858, s. 13.

Notice re-  
quired on  
sale of glebe  
land under  
Ecclesiastical  
Leasing Acts.

(*f*) S. 1 of the Ecclesiastical Leasing Act, 1858, which required three months' notice to the bishop of the diocese, is amended by s. 11 of the Glebe Lands Act, 1888, and see the Sale of Glebe Lands Rules, 1909, 1909, W. N. 317, where the form of notice is given.

(*g*) See *Ecc. Commrs. v. Pinney*, 1899, 1 Ch. 99; 68 L. J. Ch. 30.

(*g*) See Ecclesiastical Leasing Act, 1858, s. 1.

Consents  
necessary on  
sale of glebe  
land under  
Ecclesiastical  
Leasing Acts.

(*h*) See Ecclesiastical Leasing Act, 1842, s. 1. The same consents are required for a sale under the Act of 1858 as for a lease under the Act of 1842; see s. 1 of the Act of 1858.

(*i*) The words within square brackets are only required where an abstract is furnished.

was made, but shall assume that the allottee was seised thereof in fee simple in possession, free from incumbrances. The validity and regularity of the Award in all respects shall be assumed (*k*).

22. THE abstract of title to Lot — shall commence with the — Inclosure Award dated —, under which the same was allotted to — in exchange for other land (*l*), and the Purchaser shall not be entitled to call for the title to the last-mentioned land, but shall assume that the allottee was seised thereof in fee simple in possession free from incumbrances. The validity and regularity of the said Award in all respects shall be assumed.

With exchange  
under Inclo-  
sure Award.

23. LOTS — and — appear in a schedule and plan annexed to the — Inclosure Award dated —, and are therein mentioned to be old inclosures belonging to —. Such schedule and plan shall be deemed sufficient evidence of the seisin in fee simple in possession, free from incumbrances, of the said —; and no earlier title to the said Lots shall be required.

With state-  
ment in Inclo-  
sure Award.

24. THE abstract of title shall commence with the conveyance dated the — day of —, 18—, to the Vendors, who acquired the property under statutory powers for the purposes of their undertaking. The Vendors are selling the property as superfluous land under the provisions of the Lands Clauses Consolidation Act, 1845 (*m*), and the Purchaser shall not be entitled to make any objection on account of the property not having being offered

Sale of super-  
fluous land  
under Lands  
C. C. Act, 1845.

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(*k*) In the absence of stipulation, on the purchase of allotments under an Inclosure Act, the title to the property in respect of which the allotment is made must be deduced down to the date of the award, and if the allotment is made in respect of lands held under different titles, all the titles must be shown: Dart, 7th ed., 322; and see *Re Alms Corn Charity*, 1901, 2 Ch. 750; 71 L. J. Ch. 76. The allotment will be of the same tenure as the land in respect of which it was made, unless in the case of copyhold land the lord of the manor and the allottee consent to the allotment being freehold, and a declaration to this effect is made in the award: Inclosure Act, 1845, ss. 94, 147; Inclosure Act, 1847, s. 6.

Allotment  
under inclosure  
awards

(*l*) If the title to the land given in exchange is defective, the defect is transferred to the land taken in exchange: *Mint v. Leman* (1855), 24 L. J. Ch. at p. 548; *Jacomb v. Turner*, 1892, 1 Q. B. at p. 51.

Exchanges  
under inclo-  
sure awards.

(*m*) See Lands C. C. Act, 1845, ss. 127—131; *G. W. Ry. v. May* (1874), L. R. 7 H. L. 283; 43 L. J. Q. B. 233. The land must be sold within the time referred to in s. 127. Where possible the property should be offered to the persons having the right of pre-emption (s. 128), but this is often impracticable

Sale where  
land acquired  
under Lands  
C. C. Act,  
1845.

to the persons (if any) entitled to pre-emption under the provisions of the said Act, and shall in other respects assume that the requirements of the said Act have been complied with, and shall not make any requisition or inquiry or take any objection in respect thereof.

Where property was conveyed as superfluous land.

25. The abstract of title shall commence with the conveyance dated the — day of — to the Vendor by the — Company. The property was acquired by the said Company under statutory powers for the purposes of their undertaking, and was sold to the Vendor as superfluous land under the provisions of the Lands Clauses Consolidation Act, 1845. The Purchaser shall not make any inquiries or require any evidence as to whether the property was offered to the persons entitled to pre-emption under the provisions of the said Act, or whether the requirements of the said Act relating to the sale of such lands were duly complied with (*n*).

Where superfluous lands vested in the Vendor under the Lands C. C. Act, 1845, s. 127.

26. The abstract of title to the property shall commence (except in respect to a small strip of land) with a conveyance on sale dated the — day of —, 18—. The said strip of land was acquired in the year 18— by a Company acting under statutory powers, and subsequently became vested in the Vendor as superfluous land as an adjoining owner under the provisions of section 127 of the Lands Clauses Consolidation Act, 1845. The Vendor shall not be required to distinguish this strip of land, and the Purchaser shall assume that the said Company were unable to dispose of the same and shall not make any inquiry or objection in respect of the title thereto (*n*).

Commencement of title on sale by an unincorporated Building Society.

27. The abstract of title shall commence with an Indenture dated the — day of — 18—, being a mortgage to the then trustees of the — Building Society. The property is vested in the Vendors as the present trustees of that Society, which is unincorporated. A copy of the [amended] rules of the Society will be produced, and the Purchaser shall require no

Sale, where property formerly superfluous land; L. C. C. Act, 1845.

(*n*) See Lands C. C. Act, 1845, ss. 127–131. Former owners and adjoining owners have rights of pre-emption in respect of superfluous lands, other than lands in a town or lands built upon or used for building purposes; and see last note.

Superfluous land vested in adjoining owner.

(*n*) Superfluous land, acquired for the purposes of an undertaking, which remains undisposed of after the provisions of the Act have been complied with, vests in adjoining owners; Lands C. C. Act, 1845, s. 127.

further evidence of the appointment of the Vendors as trustees of the Society or of their right to convey (*p*).

28. A Purchaser whose purchase-money does not exceed £—— will be furnished with a short abstract sufficient to enable him to prepare his conveyance, and shall not, except upon the terms hereinafter mentioned, require delivery to him of any other abstract of title, but may within eight days after the sale [*or in a sale under the Court* after the certificate of the result of the sale has become binding] attend at the office of Messrs.—— at ——, the Vendor's solicitors, during the hours of ten to four in the day, to examine and take extracts from a full abstract prepared in accordance with these conditions; nevertheless on giving notice in writing to the Vendor's solicitors requesting an abstract, and also on paying to them the cost of copying within four days after the sale [*or after the certificate of the result of the sale has become binding*], he shall have delivered to him a full abstract prepared in accordance with these conditions, and whether he so attend or not, he shall be bound by these conditions, and in case a full abstract is not required, he shall be so bound in the same way as if a full abstract had been actually delivered to him on the eighth day after the sale [*or after the certificate of the result of the sale has become binding*], and shall be considered as having had such abstract actually delivered to him on that day, and time shall be deemed of the essence of this condition.

Short abstract  
of title to  
small Lots.

Each Purchaser within —— days after the delivery of his full abstract, or after the day on which his full abstract shall be considered as having been delivered to him (as the case may be), shall send [*deliver*], &c. [*continue as in the general condition No. 4, Precedent I., p. 214, inf., or sale under the Court, Precedent II., condition No. 6, p. 220, inf.*] (*q*).

29. THE abstract of title shall commence with an Indenture dated the —— day of ——, being the conveyance on sale under which the Vendor holds, but the Purchaser shall on request in writing made to the Vendor's solicitors within four

The same  
(short form).

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(*p*) See Wurtzburg's Law Relating to Building Societies, 4th ed., 149. In the case of an unincorporated society there is no statutory provision for the registration of appointments of trustees; accordingly the practice is to insert the names of the trustees in the rules, and upon new appointments to alter the rules or provide by the original rules that new appointments shall be certified as alterations.

Unincorporated  
building  
societies.

(*q*) In addition to this clause a condition must be added fixing the commencement of both the long and short abstracts.

days after the delivery of the abstract, and on paying the cost of copying, be entitled to receive an additional abstract commencing with an Indenture of conveyance on sale dated the — day of —, and if he shall not within the four days have required in writing the delivery of such additional abstract, and tendered the cost of copying the same, he shall be deemed to have dispensed with such additional abstract, and time shall be of the essence of this clause.

No abstract  
for small Lots  
unless required  
and paid for.

30. THE Vendor will deliver an abstract of his title [to the Purchaser of the whole property in case the whole be sold in one Lot, but in case of a sale in separate Lots then only] to each Purchaser whose purchase-money shall exceed the sum of £—, and each Purchaser whose purchase-money shall not exceed that sum shall on request in writing made to the Vendor's solicitors, and on payment to them within seven days after the sale of the sum of £—, be entitled to receive an abstract of the title to the Lot or Lots purchased by him, and if he shall not within such seven days have required in writing the delivery of an abstract of title, and tendered the said sum of £— in payment for the same, he shall be deemed to have accepted the Vendor's title, and a form of conveyance will be furnished to him by the Vendor, and time shall be deemed as of the essence of this condition.

Each Purchaser to whom an abstract is delivered pursuant to these conditions shall within, &c. [*continue as in the general condition No. 4, Precedent I., p. 214, inf.*] (r).

The same  
(another form).

31. THE Vendors will deliver to every Purchaser whose purchase-money [exclusive of the value of the timber] shall amount to £— or upwards, or to his solicitor, an abstract of title to the Lot or Lots purchased by him. No Purchaser whose purchase-money [exclusive as aforesaid] shall be less than £— shall be entitled to an abstract at the Vendor's expense, but he may have an abstract (if he desires) at his own expense, and may inspect at the office of the Vendor's solicitors a general abstract of title comprising the Lot or Lots purchased by him. The title to the several Lots shall commence, &c. (s).

(r) The date of the commencement of the abstract, if delivered, must be fixed by a separate condition.

Purchaser of  
several lots  
entitled to one  
abstract only.

(s) On a sale in lots, a purchaser of two or more lots held wholly or partially under the same title is entitled to one abstract only of the common title, except at his own expense; Conv. Act, 1881, s. 3 (7). When

32. THE abstract of title shall extend over the statutory period of forty years, and no inquiry, requisition, or objection shall be made in respect of the title shown by the recitals contained in any deed dated forty years or upwards before the day of sale, and all recitals contained in any deed dated — years or upwards before the day of sale of any documents dated — years or upwards before that day, and which are not in the Vendor's possession or in his power to produce, shall be taken as conclusive evidence of the material contents and due execution of any document so recited, and no further evidence of such contents, whether by production of the original or otherwise, shall be required, though the same may create a power (*t*) appearing to be exercised by an abstracted document [and where the abstract commences with a Will the testator is to be deemed to have been seised in fee simple at the date of his [Will and thenceforth up to his (*u*)] death].

Commencement at or before statutory period.

33. THE title to the property being well known in the neighbourhood, no Purchaser shall require any other evidence of such title than an abstract of the respective conveyances of the Lot or Lots purchased by him to the present Vendor (the dates whereof are referred to in the particulars) (*x*), and of any subsequent dealings by him.

Title to consist of conveyances to Vendor.

34. THE Vendor shall not be required to show or furnish any title to Lot —, or any evidence of such title, other than a statutory declaration, to be furnished at the Purchaser's expense if he requires it, from an old inhabitant of the parish in which the property is situated to the effect that the father of the Vendor, who died intestate more than — years since, was in possession of the last-mentioned Lot at his death [and that the Vendor was the heir-at-law of his father] and also a counterpart of the lease under which the present tenant has held the said Lot for twelve years and upwards of the present Vendor.

Commencement where Vendor has acquired title under the Statutes of Limitation.

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some of the lots are of small value, the above condition will be found useful.

(*t*) Compare Conv. Act, 1881, s. 3 (3); V. & P. Act, 1874, s. 2.

(*u*) The words in brackets are not required where the Will is dated after 1837: Wills Act, 1837, s. 24.

(*x*) This condition should not be used except where the lots are of small value. The dates of the conveyances should be referred to, otherwise the condition may be unnecessarily depreciatory. Where there are a large number of conveyances creating the roots of title, it may simplify matters to refer to them in the particulars.

Where a voluntary conveyance appears on the title.

35. THE abstract of title shall commence with an Indenture dated the — day of — (being a conveyance on sale of the property and other hereditaments), and no objection shall be taken on the ground that the property was in the year — conveyed by A. B. (then the owner) to his son by a voluntary conveyance, nor shall the Vendor be bound to furnish any evidence as to the financial position of the said A. B. at any time (y).

As to title to mortgage term by adverse possession, when capable of enlargement into the fee simple.

36. THE abstract of title shall commence with an Indenture of Mortgage dated the — day of —, whereby the property was demised for 500 years. The mortgage debt thereby secured and the said term were assigned to the Vendors by an Indenture of Transfer dated the — day of —; since that date they have been in possession or in receipt of the rents and profits of the property, without having given any acknowledgment to the mortgagor of his title to the right of redemption. Accordingly the Purchaser shall assume that the Vendors are absolutely entitled to the premises for the residue of the said term, free from all right of redemption [and that the Purchaser will be enabled to enlarge the term into an estate in fee simple (z)]; but the

Voluntary conveyances.

(y) Under the Voluntary Conveyances Act, 1893, a voluntary conveyance made, whether before or after the Act, in good faith is not defeated by a subsequent conveyance for value made after 28th June, 1893, as being fraudulent within 27 Eliz. c. 4. The mere fact that a voluntary conveyance appears on the title does not justify the purchaser in repudiating the contract: *Noyes v. Paterson*, 1894, 3 Ch. 267; 63 L. J. Ch. 748. The estate of the voluntary grantee is liable to be defeated by the bankruptcy of the grantor within two years from the conveyance: Bkey. Act, 1883, s. 47; *Re Tankard*, 1899, 2 Q. B. 57; 68 L. J. Q. B. 670; also by the bankruptcy within ten years if the grantor was not solvent at the date of the grant without the aid of the property comprised therein: s. 47. But a purchaser in good faith for value claiming under a settlement affected by s. 47 has a good title against the trustee in bankruptcy: *Re Brall*, 1893, 2 Q. B. 381; 62 L. J. Q. B. 457. The settlement is not void against the trustee in bankruptcy of the settlor from its date, but from the time when the trustee's title accrues: *Re Carter and Kenderline*, 1897, 1 Ch. 776; 66 L. J. Ch. 408. As to what is a settlement within the section, see *Re Plummer*, 1900, 2 Q. B. 790; 69 L. J. Q. B. 936.

Enlargement of long terms.

(z) See *Blatberg v. Keers*, 1906, 2 Ch. 175; 75 L. J. Ch. 464. As to the enlargement of a term of not less than 300 years, of which not less than 200 years is unexpired, see Conv. Act, 1881, s. 65, which does not apply to a term liable to be determined by re-entry for condition broken or created by sub-demise out of the superior term itself incapable of being enlarged: Conv. Act, 1882, s. 11.

Purchaser shall not be entitled to require any other evidence of the above facts than a statutory declaration by one of the Vendors, to be furnished if required at the Purchaser's expense.

37. PART of the property [Lots — and —, or parts thereof] was [were] demised with other land for a term of 500 years from, &c., by an Indenture dated, &c., and this term, so far as regards the part now offered for sale of the premises comprised therein, has been enlarged into a fee simple, but the vendor[s] has [have] not the original, or any copy of the Indenture of demise, nor any information relating to it other than such as appears in the abstract, and it shall be assumed, unless the contrary appears, that the term has been duly enlarged into a fee simple (a).

Enlargement of long term into fee simple, the Lease being lost.

38. THE abstract of title shall commence with a Lease dated the — day of —, whereby A. B. demised the property to C. D. for eighty years, and the title to the reversion in fee expectant on the Lease shall commence with an Indenture dated the — day of —, whereby E. F. conveyed such reversion in fee simple to G. H.; the Purchaser shall assume that the said A. B. had power to grant the Lease, and that the said E. F. had power to dispose of the reversion in fee simple as aforesaid (b).

Title to commence with Lease and conveyance of reversion in fee.

39. As to Lot —, which was formerly copyhold of the manor of —, the abstract of title to the former copyhold interest shall commence with a Surrender and Admittance on a purchase in the year —, and the title to the freehold shall commence with the Deed [or Award] of enfranchisement, dated in the year — [which contains no [a] release of the rights reserved by the Copyhold Acts to the lord]. [The sale is made subject to the rights so reserved] (c).

Enfranchised copyholds.

40. THE abstract of title to Lot —, which is copyhold of the manor of —, shall commence as to the equitable interest with

Commencement of title to copyholds.

(a) See last note.

(b) This condition should only be used where the lease is dated before the commencement of the title to the freehold reversion, see *Williams v. Spargo*, (1893), W. N. 100.

(c) See now the Copyhold Act, 1894, s. 23. The particulars of sale should mention any reservations in favour of the lord: *Upperton v. Nickolson* (1871), L. R. 6 Ch. 436; 40 L. J. Ch. 401; *Bellamy v. Debenham*, 1891, 1 Ch. 412; 60 L. J. Ch. 166. Under the Conv. Act, 1881, s. 3 (2), the purchaser is not to call for the title to make the enfranchisement: *Wolst. Conv. Acts*, 9th ed., 21.

Enfranchised copyholds.

a Deed of Covenant to Surrender dated the —— day of ——, and as to the legal customary estate of inheritance with the Surrender (steward's copy) dated the —— day of ——, and the Admission made pursuant thereto [*or* shall commence with an Indenture dated the —— day of ——, being a bargain and sale by the executors of a testator who died in the year ——, and the Admission made pursuant thereto].

Commence-  
ment of title  
to leaseholds.

41. THE abstract of title shall commence with the Lease dated the —— day of —— mentioned in the particulars, which Lease or a copy whereof will be produced at the time of sale, and may be inspected for fourteen days before the sale at the office of the Vendor's solicitors, and the Purchaser, whether he inspects the same or not (*d*), shall be deemed to have notice of all the contents thereof. [The receipt for the last payment of rent accrued due under the lease not being in the Vendor's custody, the Purchaser shall assume (on the faith of the Vendor being in possession of the property and without production of the receipt) that the covenants and conditions in the Lease have been duly performed and observed up to the time of completion, or that all breaches (if any) of such covenants and conditions have been waived (*e*).] [The production of the receipt for the last payment of rent shall be conclusive evidence that all the covenants and conditions in the Lease have been observed and performed up to the date of completion, or that all breaches (if any) of such covenants and conditions have been waived (*f*).]

(*d*) In the case of sales by private contract a copy of the lease should be sent to the purchaser with the draft contract and he should be stated to have inspected it. See also Form 49, *inf*.

(*e*) See Conv. Act, 1881, s. 3 (4). The part within square brackets, or a similar clause, is required where either a peppercorn rent is reserved or there is no rent, as on the sale of a mortgage term, or where the receipt has been lost: see *Re Moody and Yates* (1885), 28 Ch. D. 661; 30 *ib.* 344; 54 L. J. Ch. 584, 886. This condition will not preclude the purchaser from requiring evidence that the rent is not in arrear. A letter from the lessor's agent to that effect should be procured. The vendor is bound to disclose onerous and unusual covenants: *Re Haddike and Lipki*, 1901, 2 Ch. 666; 70 L. J. Ch. 811; *Molguens v. Hawtrey*, 1903, 2 K. B. 487; 72 L. J. K. B. 873. If the lease is an underlease the fact should be stated: *Re Beyfus and Masters* (1888), 39 Ch. D. 110.

(*f*) Under Conv. Act, 1881, s. 3 (4) and (5), on production of the last receipt for rent the purchaser is bound to assume that the covenants and conditions have been performed and observed, "*unless the*

Sale of lease-  
holds. Evi-  
dence of  
payment of  
rent.

42. THE property [with other property] is held under a Lease dated the — day of —, and (after divers mesne assignments) was assigned to the Vendor in the year 18—. The title shall consist of the original Lease, and of the Assignment to the Vendor, and the Purchaser shall not require the production or make any requisition or objection in respect of the intermediate title (*g*).

Title to consist of Lease and last assignment.

43. WHERE it is provided in the particulars that the Purchaser of any Lot is to take an assignment of the Lease of that and other Lots and grant underleases of such other Lots to the Purchasers thereof (*h*), the assignments and underleases shall be made and granted accordingly, and each underlease and a counterpart thereof for delivery to the lessor shall be prepared, engrossed, and stamped by and in all respects at the expense of the Purchaser who shall be lessee thereunder, and shall be executed by the lessor and lessee respectively, and shall contain all proper covenants by them (*i*) having regard to the form of the principal Lease out of which the underlease is to take effect, and the lessor shall give to the underlessee an acknowledgment of his right to production and delivery of copies of the principal Lease and of any documents of title relating thereto retained by the lessor, and also an undertaking for safe custody thereof. In case there shall be no Purchaser at this sale to take an assignment of the principal Lease, the grant of any underlease may be suspended until the principal Lease is assigned to a Purchaser

Sale of Lots held under one Lease, subdemises being made by one Purchaser to the others.

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*contrary appears.*" In such case the words in square brackets should be used: see *Barnett v. Wheeler* (1841), 7 M. & W. 364; 10 L. J. Ex. 102; *Re Highett and Bird*, 1903, 1 Ch. 287; 72 L. J. Ch. 220; explained in *Re Allen and Driscoll*, 1904, 2 Ch. at p. 231; 73 L. J. Ch. 614; see, also, *Lawrie v. Lees* (1881), 7 A. C. 19; 51 L. J. Ch. 209.

(*g*) By another condition the purchaser must be fixed with notice of the contents of the lease. As to the title to be shown to leaseholds, see Dissertation, pp. 39, 67, *sup*. If the property offered for sale is held with other property under one lease the fact should be stated, otherwise the purchaser may object on the ground that he will be liable to eviction under the power of re-entry for breaches committed in respect of the remaining property. In this case provision must be made as to how the rent is to be borne; see following forms.

Where part of property held under a lease is sold.

(*h*) This is perhaps the most usual method of dividing up the rent and carrying out the sales; but see following forms.

(*i*) See *Brown v. Paull* (1856), 2 Jur. N. S. 317; Dart, 7th ed., 572, 580.

or the Vendor may (*k*) at his option in the meantime grant any underlease. In case any difference shall arise as to the form of any underlease or otherwise as to the grant thereof under this condition, or as to the payment of any costs or expenses connected therewith, or in case any other difference or question shall arise as to the mode of giving effect to this condition or any matter arising thereout, such difference or question shall be settled by [*in sales by the Court the judge at Chambers*] arbitration pursuant to the Arbitration Act, 1889.

The same  
(another form).

44. All the Lots [Lots —] being held under the same Lease, the purchases thereof shall be carried into effect in manner following (that is to say) :—If all the Lots are sold the Purchaser whose purchase-money is the largest shall take an assignment of the Lease and grant underleases of the other Lots to the Purchasers thereof respectively, but if any Lot remains unsold the Vendor shall retain the Lease and grant underleases of the Lots sold to the Purchasers thereof respectively. Every underlease under this condition shall be for the residue of the term granted by the principal Lease except the last day thereof, and at the apportioned rent mentioned in the particulars as payable in respect of the Lot or Lots comprised therein, and the same shall contain a covenant by the underlessee to pay the apportioned rent and observe and perform the lessee's covenants in the Lease so far as the same relate to such Lot or Lots and the usual condition of re-entry for non-payment of rent or breach of covenants.

Purchasers to  
have under-  
leases from  
the Vendor.

45. UNLESS all the Lots are sold to the same Purchaser, the Vendor will retain the Lease and grant underleases to the several Purchasers of the Lots purchased by them respectively, each such underlease to be for the residue of the term granted by the principal Lease and at the apportioned rent mentioned in the particulars as payable in respect of the Lot or Lots comprised therein, and to contain a covenant by the underlessee to pay the apportioned rent and observe and perform the lessee's covenants in the lease so far as the same relate to such Lot or Lots and the usual condition for re-entry on non-payment of rent or breach of

Grant of  
underlease by  
trustees.

(*k*) This could not formerly be done where the vendors were trustees under an ordinary trust for sale owing to the decision in *Re Walker and Oakshott*, 1901, 2 Ch. 383; 70 L. J. Ch. 666, which has now been overruled by *Re Judd and Poland*, 1906, 1 Ch. 684; 75 L. J. Ch. 403.

covenant. If no Lot remains unsold the Vendor will, instead of sub-demising the Lot or Lots to the Purchaser whose purchase-money is largest, or in the case of equality to the Purchaser of the first of such Lots sold, assign the Lease to such Purchaser subject to the underleases granted to the other Purchasers. If all the Lots are sold to the same Purchaser, the Vendor shall execute to him a proper assignment thereof in the usual way.

46. THE Vendor and all other necessary parties (if any) shall execute to the Purchaser of each Lot a proper assignment of that Lot, subject to the apportioned rent mentioned in the particulars as payable in respect thereof, and the Purchaser shall execute a counterpart thereof. Every assignment shall contain a covenant by the Purchaser to pay the apportioned rent and to observe and perform the lessee's covenants so far as the same relate to the Lot or Lots comprised in the assignment, and to keep indemnified the Vendor and all persons deriving title under him, and in particular the Purchasers of the other Lots from and against the same; and the Purchaser shall also charge the purchased premises with all money payable by him under his said covenant. The counterpart of each assignment will be retained by the Vendor, who will give a statutory acknowledgment [and undertaking (l)] in respect thereof, as well as of other documents (if any) retained by him, to the other Purchasers.

On completion, Vendor to execute assignments to Purchasers at apportioned rents.

47. THE abstract of title shall commence with the Lease dated the — day of —, which was granted in consideration of the surrender of a prior Lease. The Vendor shall not be required to show any title to the surrendered Lease, or to obtain the production thereof (m).

Commencement of title to renewable leaseholds.

48. By deed dated the — day of — the property was sub-demised by way of mortgage for the residue, except the last — days, of the principal term granted by the Lease mentioned in

Mortgage term by sub-demise, the sale being made by Purchasers from the Mortgagees.

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(l) To be omitted if the vendor is a trustee.

(m) On the sale of renewable leaseholds, where the lease is expressed to have been granted in consideration of the surrender of a prior lease, the vendor must show the title to the surrendered lease in the absence of any stipulation to the contrary: *Hodgkinson v. Cooper* (1846), 9 Beav. 304; 15 L. J. Ch. 160. If a good leasehold title is registered under the L. T. Acts, this decision would not be applicable.

Title to be shown to renewable leaseholds.

the particulars (*u*), and the mortgage term created by the sub-demise was sold under a power in the mortgage deed, [(*o*) which declares that after a sale the Mortgagor is to stand possessed of the principal term in trust for the Purchaser]. The Purchaser shall have an assignment of the mortgage term only, and shall not require the Vendor to procure any assignment of the principal term, nor require him to show in whom that term is now vested; and any assignment of, or order for vesting in the Purchaser, the principal term, and all information and evidence requisite in order to procure the same, shall be searched for and obtained by and at the expense of the Purchaser.

The same  
(several Lots).

49. THE abstract of title to each Lot shall commence with the Lease (*p*) under which the same is held, all the Leases being dated in the year 18—. In consequence of mortgages having been made by sub-demise and of foreclosures and sales by the Mortgagees the mortgage terms created by sub-demise are alone vested in the Vendor, and will be assigned to the Purchasers; and if any Purchaser requires an assignment of the principal terms granted by the respective Leases, such assignment shall be procured and the title thereto shall be traced by him and at his own expense, and no objection or requisition shall be made on account of such principal term being outstanding, nor shall the Vendor be required to give any information with reference thereto.

Mortgage term  
by sub-demise  
sold by Mort-  
gagees, the  
head term  
being got in  
under a power  
of attorney, or

50. BY the mortgage deed under which the Vendor sells, the premises were demised for the residue except the last — days of the principal term granted by the Lease mentioned in the particulars, and the Mortgagor is constituted a trustee (*q*) of the principal term in trust to assign and dispose of the same as the

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(*u*) The particulars must state the term sold as being the residue less the specified days of the term granted by the original lease.

(*o*) If the power does not contain the clause here referred to, the words in brackets must be omitted.

(*p*) The particulars must state the term sold as being the residue less the specified days of the term granted by the original lease.

(*q*) A mere covenant to assign will enable the purchaser to get an order for the owner of the legal term to convey it; if he refuses, the Court may appoint a person to execute the conveyance: *Jud. Act*, 1884, s. 14; and see *Dart*, 7th ed., 607. Unless there is a declaration of trust, it may be doubted whether a vesting order could be obtained: *Re Propert* (1853), 22 L. J. Ch. 918.

persons entitled to the mortgage money shall direct [and an irrevocable power of attorney (s) is given to the Mortgagee to enable him to assign the principal term. The Purchaser shall be entitled to an assignment of the principal term under the power if and so far as the power is available, but shall not require the Vendor to show (as is believed to be the case) that the power is now available, nor to make any objection on account of its not being available], *or where the power of attorney cannot be used* [and a power (t) to remove the Mortgagor from being a trustee and to appoint a new trustee in his place is given to the persons entitled to the mortgage money. The Vendor will, at the cost of the Purchaser requiring it, by deed remove the Mortgagor from the trust, and appoint a person named by the Purchaser in his place and vest in him by declaration the principal term so as to enable the Purchaser to get in the same, but the Purchaser shall not be entitled to make any objection with respect to the validity of the said power to appoint a new trustee nor require the principal term to be got in otherwise than as aforesaid], *or where there is no power to get in the principal term.* [The Purchaser shall be entitled to the benefit (to be enforced or obtained at his own expense) of the said trust, and shall make no objection on the ground that the principal term is outstanding, and shall not require the Vendor to get in the same or trace the title thereto.]

under the power to appoint a new trustee, *or* where it cannot be got in without a vesting order (r).

### SECTION III.

#### *As to Matters arising on the Abstract.*

51. ANY bare outstanding legal estate (u) which a [the] Purchaser may require to be got in shall be got in [and

Bare legal estate.

(r) Form No. 140, p. 198, *inf.* will also be used in connexion with this form.

(s) This alternative form should not be used where the person named as attorney is dead, as the power would then cease, though unaffected by the death of the mortgagor (Conv. Act, 1882, s. 2); and see next alternative.

(t) See *London and County Bank v. Goddard*, 1897, 1 Ch. 642; 66 L. J. Ch. 261.

(u) The person in whom a bare outstanding legal estate is vested is defined as a "bare trustee." In reference to s. 5 of the V. & P. Act, 1874 (repealed by s. 48 of the L. T. Act, 1875, which was itself repealed by the Conv. Act, 1881, s. 30), a bare trustee was defined in the 6th ed. of Dart as "a trustee to whose office no duties were originally attached, or who, though such duties were originally attached to his office, would on the

Meaning of "a bare trustee."

the title thereto traced (x)] by him and at his own expense (y).

Presumption  
of reconvey-  
ance of legal  
estate.

52. The reconveyance of any legal estate by any Trustee or Mortgagee shall be presumed, where the period of — years has elapsed from the last abstracted conveyance thereof, and where no mention is made in any of the subsequent deeds of such legal estate being outstanding (z).

Determination  
of Leases for  
lives to be  
assumed.

53. In a covenant against incumbrances contained in a deed dated — two Leases determinable on the lives of A. B. and C. D. are excepted. No evidence shall be required of the

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requisition of his *cestuis que trust* be compellable in equity to convey the estate to them or by their direction and has been requested by them so to convey it." In the opinion of Hall, V.-C., the words "has been requested by them so to convey it" are not a necessary ingredient to a person being a bare trustee: *Christie v. Ovington* (1875), 1 Ch. D. 279; and this view was supported by Stirling, J., in the case of *Re Cunningham and Frayling*, 1891, 2 Ch. 567; 60 L. J. Ch. 591, where he disagreed with the opinion expressed by Jessel, M.R., in *Morgan v. Swansea Urban Sanitary Authority* (1878), 9 Ch. D. 582—viz., that a trustee who has a beneficial interest is not a bare trustee. In a sale under the Court a married woman, who is a trustee, although she is beneficially interested in the proceeds of sale, is a bare trustee within the meaning of s. 6 of the V. & P. Act, 1874 (now replaced by s. 16 of the T. Act, 1893): *Re Docwra* (1885), 29 Ch. D. 693; 54 L. J. Ch. 1121. The husband of a married woman who is seised in her right is not a bare trustee within the Fines and Recoveries Act, 1833: *Keer v. Brown* (1859), Johns. 138; 28 L. J. Ch. 477. A married woman, who is a trustee and mortgagee, on payment of the mortgage debt, is a bare trustee within the meaning of s. 16 of the T. Act, 1893: *Re Houghgate and Osborn*, 1902, 1 Ch. 451; 71 L. J. Ch. 279; cf. *Re Harkness and Allsopp*, 1896, 2 Ch. 358; 65 L. J. Ch. 726. See now the M. W. P. Act, 1907, which enables a married woman trustee to dispose of trust property without the deed being acknowledged, though possibly the concurrence of her husband may still be required. It is unnecessary to trace the legal estate further than to show that it can be got in, and a good title is made by showing a good equitable title and power to get in the legal estate under the Trustee Acts or otherwise: *Camberwell Building Society v. Holloway* (1879), 13 Ch. D. 754; 49 L. J. Ch. 361.

(x) Without these words the costs of deducing title will fall on the vendor: *Re Adams and Frost*, 1907, 1 Ch. 695; 76 L. J. Ch. 408.

(y) As to the necessity for these words, see *Sheerness W. W. Co. v. Polson* (1861), 3 D. F. & J. 36; 30 L. J. Ch. 326.

(z) This condition is framed in general terms, but it would be more usual to state the circumstances under which the presumption is to be made. It must not be used unless it is believed that the legal estate has been got in.

As to when the conveyance of the legal estate will be presumed, see Dissertation, p. 127.

determination of those Leases, nothing being now known by the Vendor concerning the same, or either of them.

54. THE Purchaser[s] shall be deemed to have notice of the terms on which all tenants hold (*a*), whether arising during the continuance or after the determination of the tenancies, including any right to remove fixtures, and shall not object on account of there being no agreement in writing with any tenant.

Notice of  
rights of  
tenants.

55. ABSTRACTS or copies of the Leases or of the agreements (if in writing) under which the tenants hold can be inspected at the office of the Vendor's solicitors during a period of fourteen days next preceding the day of sale or in the sale-room at the time of sale, and the [each] Purchaser shall, whether he inspects the same or not, be deemed to have notice of and shall take subject to the terms of all the existing tenancies, whether arising during the continuance or after the expiration thereof, and such notice shall not be affected by any partial or incomplete statement in the particulars with reference to the tenancies (*b*), and no objection shall be made on account of there not being an agreement in writing with any tenant.

Contents of  
tenants' leases.

56. No objection shall be made on the ground that any Lease or agreement for tenancy was made or entered into by a Mortgagor [or that a mortgagor accepted the surrender of any lease] without the concurrence of his Mortgagees (*c*).

Leases by  
Mortgagor  
alone.

(*a*) This condition should be used where the sale is expressed to be made "subject to the tenancies" and the tenancies are not specified: *Caballero v. Henty* (1874), L. R. 9 Ch. 447; 43 L. J. Ch. 635; and see Dart, 7th ed., 884, 885. The purchaser must be given an opportunity to inspect any important leases. See next form.

(*b*) See note to last form. In the case of a sale by private treaty the form will run thus: "Abstracts or copies, &c. [*as in text*], under which the tenants hold have been inspected by the Purchaser, who shall be deemed, &c., and such notice shall not be affected by any partial or incomplete statement in this agreement with reference, &c."

(*c*) This condition is not required where the lease takes effect under Conv. Act, 1881, s. 18, or has been brought within that s. by agreement. As to how a lease by mortgagor and mortgagee now takes effect having regard to the s., see *John Bros. v. Holmes*, 1900, 1 Ch. 188; 69 L. J. Ch. 149. There is no implied power for the mortgagor to accept a surrender of a lease granted under the s.: *Robbins v. Whyte*, 1906, 1 K. B. 125; 75 L. J. K. B. 38.

Leases by  
mortgagor  
alone.

Surrender to  
mortgagor.

Presumption  
as to regularity  
of proceedings  
where pur-  
chase made  
under an  
Inclosure Act.

57. WHERE any part of the property appears from the abstract to have been purchased from the Commissioners under an Inclosure Act, the Purchaser shall assume that the provisions of the Act in relation to the sale by the Commissioners, the payment of the purchase-money, and the discharge of such part of the property from title have been duly complied with (*d*).

Allotments  
and exchanges  
under Inclo-  
sure Acts.

58. ALL exchanges and allotments made more than — years before the day of sale under any Inclosure Act or award shall, unless the contrary appears, be deemed duly made in respect of the title under which the lands taken in exchange or on allotment appear by the abstract or otherwise to have been since held, and no requisition or objection shall be made in respect of any such exchange or allotment, or in respect of the title to the land given in exchange, or in respect whereof the allotment was made [or in respect of the award] (*e*).

Exchanges for  
adjusting  
boundaries.

59. WHERE exchanges of small pieces of land have been made for adjusting boundaries, the Vendor shall not be required to show title to or identify any land so taken or given in exchange (*f*).

As to land  
acquired under  
agreement for  
exchange  
without a  
conveyance.

60. ABOUT an acre of land, part of Lot —, was acquired by the vendor under an agreement for exchange made in the year — with A. B., and has been in the possession of the Vendor since that time, but no conveyance has been made to him for completing such exchange. The said A. B. died intestate in the year —, leaving an infant heir, —. The Vendor shall not be required to procure a conveyance of the said land, or to furnish any title thereto, or to the land given by him in exchange for the same, other than the aforesaid agreement (*g*).

Encroach-  
ments.

61. A small strip of the property was acquired by encroachment in the year 18— by A. B., who was then a lessee of the

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(*d*) See Dart, 7th ed., 181, as to the necessity for this condition.

Title to land  
under inclo-  
sure award.

(*e*) See note to Form No. 21. Upon the sale of lands allotted under an inclosure award, the abstract down to the award must be that of the title to the lands in respect of which the allotment was made: Dart, 7th ed., 181, 322 *et seq.*; and see *Re Abms Corn Charity*, 1901, 2 Ch. 750; 71 L. J. Ch. 76.

Adjustments  
of boundaries  
without any  
conveyances.

(*f*) Frequently a boundary is adjusted between adjoining owners without any deed of exchange or cross conveyances being executed. It seems that if each party enters in the lifetime of the other and the land is in the same county, the exchange will be valid: Litt. s. 62; Dart, 7th ed., 1036, 1037.

(*g*) Form No. 51 should also be used in regard to the legal estate.

remaining property. The said A. B. subsequently acquired the freehold reversion of the property comprised in his Lease, but the conveyance did not include the said strip of land. The Purchaser shall assume that the said A. B. intended the encroachment for his own benefit, and shall not require any evidence of the title of the Vendor thereto except the production of the conveyance to him by the said A. B. of the said strip (*h*).

62. EVERY recital or statement contained in any deed or other instrument dated — years or upwards before the day of sale, shall be accepted as conclusive evidence of the matter or fact recited or stated (*i*).

Recitals  
evidence

63. THE Vendor is selling as mortgagee under his statutory power of sale, and the Purchaser shall not require any evidence that the power has become exercisable nor make any objection or requisition with reference thereto (*k*).

Mortgagee  
selling under  
statutory  
power of sale.

64. WHERE any mortgage has been made to the trustees of a Building [Friendly] Society, and a receipt for the money secured appears to be indorsed on the mortgage deed, and purports to be signed by trustees [and countersigned by a secretary] of the Society, the Purchaser shall assume that the persons so signing

Building and  
Friendly  
Society mort-  
gages.

(*h*) Inclosures or encroachments made by a tenant will generally, as between him and his landlord, be the property of the latter, unless it can be proved that the tenant at the time intended the encroachment for his own benefit, and not to hold it as he held the estate of which he was tenant: *Doe v. Jones* (1847), 15 M. & W. 580; 16 L. J. Ex. 38; *Andrews v. Hailes* (1853), 2 El. & Bl. 349; 22 L. J. Q. B. 409; *Doe v. Tidbury* (1854), 14 C. B. 304; 23 L. J. C. P. 57; *Lord Hastings v. Saddler* (1898), 79 L. T. 355; *East Stonehouse U. D. C. v. Willoughby*, 1902, 2 K. B. 318, 336; 71 L. J. K. B. 873; and see Dart, 7th ed., 182, 183.

Encroach-  
ments.

(*i*) This condition is only required where the recital is contained in an instrument dated within twenty years: see V. & P. Act, 1874, s. 2, r. 2. On a sale by trustees a condition unnecessarily restrictive as to recitals is depreciatory: *Dunn v. Flood* (1884), 25 Ch. D. 629; affd. 28 *ib.* 586; 53 L. J. Ch. 537; 54 *ib.* 370; but see now as to depreciatory conditions T. Act, s. 14.

Condition as  
to recitals.  
Depreciatory  
on sale by  
trustees.

(*k*) See *Life Interest, &c. v. Hand in Hand, &c.*, 1898, 2 Ch. 230; 67 L. J. Ch. 548. Yet when the purchase is completed the evidence on this point is not material (see Conv. Act, 1881, s. 21 (2)), and it would seem to follow that it ought not to be asked for. The three months' default in payment mentioned in s. 20 is from the service of the notice, not from the date fixed by the notice for payment: *Barker v. Willingworth*, 1908, 2 Ch. 20; 77 L. J. Ch. 581. The duties of a mortgagee who sells are defined in *Kennedy v. De Trafford*, 1897, A. C. at p. 185; 66 L. J. Ch. 413.

were at the time of signing the duly appointed trustees [and secretary respectively] of the Society, and accordingly that the receipt operated as a complete release and reconveyance of the mortgaged property, and shall not make any requisition, objection, or inquiry in reference to the appointment of the trustees or secretary, or to the constitution of the Society (*l*).

As to satisfaction of mortgage.

65. THE Purchaser shall not be entitled to any other evidence of the satisfaction of a Mortgage dated the — day of — than the fact that the mortgage deed is now in the possession of the Vendor, and a statutory declaration by him to the effect that the mortgage deed has been in his possession during the last — years, and that no claim has ever been made upon him for principal or interest under the same (*m*); nor shall any objection be made on the ground that the legal estate is outstanding.

Satisfied term.

66. THE beneficial interest in a charge secured by a term of years attendant on the inheritance with the beneficial interest in

Friendly and Building Society receipts.

(*l*) This condition with the words in brackets applies to Friendly Societies: see the Friendly Societies Act, 1875, s. 16 (7), now repealed and re-enacted by the Friendly Societies Act, 1896, ss. 53 (1), 107; see also the Act of 1908. Without the words in brackets, it applies to Building Societies, but only to those established under 6 & 7 Will. 4, c. 32 (see s. 5), whose mortgages were made to trustees. If the society has been established under the Building Societies Acts, 1874 (see Act of 1894, s. 29), it is a corporation (see Act of 1874, s. 9), and the mortgage is made to the corporation. If a society established under the previous Act has obtained a certificate of incorporation under the Act of 1874 (see s. 7), then (see s. 27) the securities and property become transferred from the trustees to the corporation. In either of these cases the receipt (see s. 42) will be under the seal of the corporation and proves itself, and the person countersigning would be assumed to be the proper officer as described, so that no special condition would be necessary. As to the effect of the indorsed receipt, see *Hosking v. Smith* (1888), 13 A. C. 582; 58 L. J. Ch. 367, and cases there cited; *Harvey v. Municipal, &c. Society* (1884), 26 Ch. D. 273; 53 L. J. Ch. 1126; *Crosbie-Hill v. Sayer*, 1908, 1 Ch. 866; 77 L. J. Ch. 466.

Rights of mortgagor and mortgagee under Statutes of Limitation.

(*m*) Under the R. P. Lim. Acts, a mortgagee may take proceedings to recover land within twelve years after the last payment of principal or interest: *Kibble v. Fairthorne*, 1895, 1 Ch. 219; 64 L. J. Ch. 184; but after the period had expired the mortgagee is absolutely barred: *Re Hazeldine*, 1908, 1 Ch. 34; 77 L. J. Ch. 97; even when there is a prior mortgage on foot. Where a mortgage is paid off and no reconveyance is executed, the mortgagor being a tenant at will does not acquire the legal estate till the expiration of thirteen years: *Sauls to Thompson* (1883), 22 Ch. D. 614; 52 L. J. Ch. 406. See also Dart, 71th ed., 456 *et seq.* As to the law before the Act of 1833, see Carson, 2nd ed., 186-187.

the land became vested in a predecessor in title of the Vendor in the year 18—. The Purchaser shall not require any evidence or take any objection as to the creation of or title to the said term, and shall assume that the same is satisfied and merged in the inheritance (*u*).

67. An Indenture dated the — day of — was executed by the attorney of the Vendor. The Purchaser shall assume that the principal was then living (*o*). As to deed executed by attorney.

68. A deed dated in the year — is expressed to be made in exercise of a power. The Purchaser shall assume that the formalities prescribed by the instrument which conferred the power were duly complied with and shall not require the production of such instrument or take any objection in respect thereof (*p*). Deed executed under a power.

69. THE property was specifically devised [bequeathed] to the Vendor by the Will of a testator who died in the year —. The Purchaser shall assume that the assent of the executors was given to the devise [bequest], and shall require no evidence thereof (*q*) [but the Purchaser shall be entitled at his own expense, if he so requires, to a statutory declaration that the Vendor has been in possession or in receipt of the rents and profits since the death of the said testator]. No proof of assent to devise or bequest of freeholds or leaseholds.

70. THE property was specifically devised to A. B. by the Will No evidence of death.

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(*u*) See the Satisfied Terms Act, 1845. Until the two beneficial interests become united, the term does not become satisfied: Dart, 7th ed., 534, 535. No useful purpose beneficial to the owner of the term must remain unsatisfied: *Anderson v. Pignet* (1872), L. R. 8 Ch. at p. 189; 42 L. J. Ch. 310. Satisfied terms.

(*o*) This condition is not required where an irrevocable power is given under the Conv. Act, 1882, s. 8 or s. 9, which apply to powers of attorney created by instruments executed after 1882.

(*p*) This condition is not required if the deed creating the power is dated before the time fixed for the commencement of the title: Conv. Act, 1881, s. 3 (3); and see Dissertation, p. 65, *sup*. Execution and attestation of deeds under powers.

(*q*) Leaseholds vest in the executor on the death of the lessee and pass to the legatee as soon as he assents to the bequest, which assent need not be in writing: *Re Culverhouse*, 1896, 2 Ch. 251; 65 L. J. Ch. 484; *Austin v. Beedoe* (1893), 41 W. R. 619. Until the assent is given the executor's power of sale remains: *Graham v. Drummond*, 1896, 1 Ch. 968; 65 L. J. Ch. 472. The same remarks now apply to freeholds under Part I. of the Land Transfer Act, 1897, in the case of deaths occurring after 1897. A legal estate in copyholds does not pass to the executor, but an equity does: *Re Somerville and Turner*, 1903, 2 Ch. 583; 72 L. J. Ch. 727. Where the legatee or devisee sells and the assent was not given in writing or has been lost, the above condition should be used. Assent of executor to bequest or devise.

of a testator who died in the year ——. The said A. B. disappeared in the year ——, and has not been heard of since that time. The Purchaser shall assume that the said A. B. predeceased the testator, and that the property passed under the gift of the testator's residuary estate, and shall be satisfied as to the above-mentioned facts on the production of a statutory declaration stating the date of such disappearance and the steps which were taken to discover the said A. B. (r).

Dower.

71. It shall be assumed that no wife or widow of any former owner is entitled to dower or freebench, unless it appear on the abstract that he was married (s).

(r) See *Re Aldersey*, 1905, 2 Ch. 181; 74 L. J. Ch. 548; *Re Jackson*, 1907, 2 Ch. 354; 76 L. J. Ch. 354.

Dower.

(s) This condition is only necessary in case of an intestacy, or of a person of an age to have been married on or before the 1st January, 1834.

Old Law.

Under the old law of dower, a widow was entitled to dower out of all corporeal hereditaments, and also out of all incorporeal hereditaments which savour of the realty, as, for instance, advowsons appendant or in gross, tithes, rents, franchises, commons appendant, &c., of which her husband was solely seised for any legal estate of inheritance in possession at any time during the coverture, and which the issue, if any, of the wife might by possibility inherit, but not out of equitable estates.

Present Law.

The Dower Act, 1833, s. 2, provides with respect to every woman married after the 1st January, 1834, that when the husband dies beneficially entitled to any land for an interest which shall not entitle his widow to dower out of the same at law, and such interest, whether wholly equitable, or partly legal and partly equitable, is an estate of inheritance in possession, or equal to an estate of inheritance in possession (other than an estate in joint tenancy), then his widow shall be entitled in equity to dower out of the same land.

The Act also provides that the widow may be deprived by her husband of her right to dower, not only by a declaration in a deed that she shall not be entitled to dower (see *Re Gibbon*, 1909, 1 Ch. 367; 78 L. J. Ch. 264), but by an absolute disposition of the property in his lifetime, or by his will, or by a declaration in the conveyance to the husband, or by any deed executed by him, or by a declaration in his will, that she shall not be entitled to dower (ss. 4, 6, 7). Partial estates and charges created by any disposition or will of a husband, and all debts, incumbrances, contracts, and engagements to which his land shall be subject, are valid as against the wife's right to dower (s. 5). If the husband devises any land to his widow, out of which she would be dowable if the same had not been so devised, or any estate or interest therein, her right to dower is thereby destroyed in respect of any land of her husband, unless the will provides to the contrary (s. 9). But the Act does not prevent a Court of equity from enforcing any covenant or agreement entered into

72. THE statutory declaration with which the Vendor on the occasion of his purchase was furnished in proof of the pedigree of —, of the identity of the property, and of various other circumstances connected with the title, shall be accepted by the Purchaser as conclusive evidence of the facts therein stated and declared. A copy of the declaration can be inspected by the Purchaser at the office of the Vendor's solicitor at any time during the period of fourteen days next preceding the sale and in the sale-room at the time of sale, and the Purchaser, whether he inspects or not, shall be deemed to have notice of all the contents thereof.

Declaration given to former Vendor to be accepted.

73. As to Lot —, no claim having been made against the Vendor in respect of a legacy of £—, charged thereon by the will of a former owner, who died more than — years ago, and which became payable on his death, but for which no receipt or release can be produced, the Purchaser shall assume that all claims in respect of the legacy have been discharged (*u*).

Evidence as to satisfaction of a particular legacy.

74. THE Vendor shall not be required to produce the receipt

Evidence as to satisfaction of legacies generally.

by the husband not to bar the right of his widow to dower out of his lands, or any of them (*s*. 11).

The Dower Act extends to lands of gavelkind tenure: *Farley v. Bonham* (1861), 2 John. & H. 177; 30 L. J. Ch. 239; but not to copyholds: *Powdrell v. Jones* (1854), 2 Sm. & G. 407; 24 L. J. Ch. 123. If a copyholder has died intestate, proof will be required that he did not leave a wife entitled to freebench, but if he devised the property by will, freebench is barred by s. 3 of the Wills Act, 1837: *Lacey v. Hill* (1875), L. R. 19 Eq. 346; 44 L. J. Ch. 215; *Re Thomas* (1886), 34 Ch. D. 166; 56 L. J. Ch. 9. The Real Property Limitation Acts do not apply to an action for assignment of dower: *Williams v. Thomas*, 1909, 1 Ch. 713; 78 L. J. Ch. 473.

Where the net value of an intestate's estate exceeds £500 the widow, if there are no issue, will be entitled to £500 as well as dower: Intestates Estate Act, 1890, s. 4. The dower comes after the £500 and is subject to it: *Re Charrière*, 1896, 1 Ch. 912; 65 L. J. Ch. 460. The Act does not apply to cases of partial intestacy: *Re Twigg*, 1892, 1 Ch. 579; 61 L. J. Ch. 444. A widow's right under the Act may be barred by a settlement: Dart, 7th ed., 542; *Re Hogan*, 1901, 1 Ir. R. 168. For further decisions on the Act, see *In b. Bryant*, 1896, P. 159; 65 L. J. P. 96; *Re Heath*, 1907, 2 Ch. 270; 76 L. J. Ch. 450; *Re Cuffie*, 1908, 2 Ch. 700; 77 L. J. Ch. 776.

Intestates Estate Act, 1890.

(*u*) A legacy should not as a rule be charged on real estate. If any capital sums are to be raised out of land, either a term should be limited to trustees on trust to raise them or the land should be devised on trust for sale and the legacy made payable out of the proceeds. An annuity charged on land should be limited as a rent-charge, unless there is a trust for sale.

Mode of charging legacies.

for, or any other evidence of, the satisfaction of any pecuniary legacy bequeathed by the Will of a testator who died in the year —, the payment of which is not thereby postponed, and the Purchaser shall assume that every such legacy has been satisfied (*r*).

Evidence of  
payment of  
legacies.

75. As regards legacies and capital sums charged by the will of any person who died more than twelve years before the day of sale, a statutory declaration will, if required by any Purchaser, be furnished at his expense, to the effect that no interest has been paid thereon and no claim made in respect thereof for twelve years and upwards last past, and upon the evidence afforded by such declaration it shall be assumed that the legacies and capital sums have been paid (*v*).

Alteration in  
deed.

76. In an Indenture of conveyance dated the — day of —, the words “and his heirs” appear to have been added after the deed was engrossed. The Purchaser shall assume that the said words were added before the deed was executed, and shall not take any objection in respect of such alteration (*y*).

Where land  
has been pur-  
chased by the  
Vendor who  
is a trustee  
without power  
to invest in  
land.

77. THE property was purchased by the Vendor in the year — at the request of the tenant for life of the proceeds of sale of property directed to be sold by the Will of the late A. B., which did not contain any power to purchase land, and

(*r*) The period of limitation in the case of a legacy charged on land is twelve years: R. P. Lim. Act, 1874, s. 8; only six years' arrears of interest can be claimed.

Legacies  
charged on  
land.

(*v*) Although more than twelve years may have elapsed since legacies and sums charged on the land became payable, the purchaser is entitled to require receipts or a release from the person entitled to those charges, as the claims on their account may still be subsisting by reason of infancy, or other disability, or of some intermediate acknowledgment: *Shields v. Rice* (1839), 3 Jur. 950; *Cooke v. Soltan* (1824), 2 Sim. & St. 154; 2 L. J. (O. S.) Ch. 30; and see the R. P. Lim. Act, 1874, s. 8; and generally, as to the presumption of the satisfaction of charges, Dart, 7th ed., 459 *et seq.* A condition that “no evidence shall be required of the payment of any sum of money charged on the property which became payable twelve years or upwards prior to the day of sale” precludes a purchaser from requiring a conditional surrender of copyholds by way of mortgage, where the mortgagee had not been admitted, to be vacated; *Hopkinson v. Chamberlain*, 1908, 1 Ch. 853; 77 L. J. Ch. 567.

Alterations in  
documents.

(*y*) A material alteration in a document avoids it, but an immaterial alteration does not: *Re Horgate and Osborn*, 1902, 1 Ch. 451; 71 L. J. Ch. 279; *Bishop of Crediton v. Bishop of Exeter*, 1905, 2 Ch. 455; 74 L. J. Ch. 697. The presumption, in the absence of evidence to the contrary, is that the alterations were made before execution: see Dart, 7th ed., 494; Norton, 26—42.

accordingly the property by operation of law became impressed with an implied trust for sale. The said tenant for life died on the — day of —. The Vendor is now selling under the implied trust for sale at the request of the beneficiaries, who have not elected to take the property in its present state or done anything to put an end to the trust for sale. The Purchaser shall be entitled to join, in his conveyance, C. D., one of the beneficiaries, for the purpose only of acknowledging that the trust for sale is still on foot, but shall not require the concurrence of any other beneficiary. The Purchaser shall be entitled to an abstract sufficient to show that the said C. D. is a person — interested in the proceeds of sale, but shall not be entitled to any other abstract relating to the beneficial interests, nor make any objection or inquiry in reference thereto, and shall assume that the trust for sale is subsisting (*z*).

78. THE Purchaser shall assume that every surrender or admittance effected pursuant to a power of attorney was authorised by the power under which it appears on the court rolls to have been made, and production of the power shall not be required (*a*).

Power of  
attorney to  
surrender

79. THE Lease [*or Underlease*] contains a restriction on assignment without licence. The Vendor will immediately after the sale and at the cost of the Purchaser apply for and endeavour to obtain the necessary licence, and the Purchaser shall perform any reasonable condition required by the landlord previous to granting it (*b*), and if the Vendor is unable to obtain it within

Where there is  
a covenant not  
to assign with-  
out licence.

(*z*) To put an end to the trust for sale all the beneficiaries must be *sui juris*; if one of them objects to take the property as real estate it must be sold. Where land is purchased in breach of trust it is best to convey it on trust for sale and keep the money settlement off the title; and see Dart, 7th ed., 629, 630.

Trust for  
sale, how  
determined.

(*a*) As to the necessity for this condition, *cf. Re Airey*, 1897, 1 Ch. 164; 66 L. J. Ch. 152. See the Copyhold Act, 1894, s. 48, as to the appointment by the lord or tenant of an agent by power of attorney.

(*b*) The vendor is not bound to take legal proceedings for the purpose of obtaining the landlord's consent: *Lehmann v. McArthur* (1868), L. R. 3 Ch. 496; 37 L. J. Ch. 625. Apart from any condition the vendor is bound to do his best to obtain the licence, and is liable in damages if he does not do so: *Day v. Singleton*, 1899, 2 Ch. 320; 68 L. J. Ch. 593; *cf. Bain v. Fothergill* (1874), L. R. 7 H. L. 158; 43 L. J. Ex. 243; and see *Pease v. Courtney*, 1904, 2 Ch. 503; 73 L. J. Ch. 760; but he need not obtain it until the title is accepted and a conveyance tendered: *Ellis v. Rogers* (1885), 29 Ch. D. 661, 672

Licence to  
assign.

— weeks from the day of sale he may rescind the contract for sale in the same manner and upon the same terms as if the Purchaser had made and insisted on a requisition which the Vendor is unable to comply with.

Covenants in lease at a nominal rent.

80. THE Lease being at a nominal rent, the mere fact of possession under it at the time of completion of the purchase shall be accepted as sufficient evidence of due performance of the lessee's covenants up to that time (*c*).

Contents of Lease or Underlease.

81. An abstract or copy of the Lease[s] [*or Underlease*] creating the term[s] sold as mentioned in the particulars can be inspected at the office of the Vendor's solicitors during a period of fourteen days next preceding the day of sale or in the sale-room at the time of sale; and the Purchaser shall, whether he inspects the same or not, be deemed to have notice of all the contents thereof, and such notice shall not be affected by any partial or incomplete statement of those contents in the particulars or these conditions [*add in case of sale of an underlease*, and no inquiry shall be made as to the contents of any superior Lease] (*d*).

Provision for underleases described as leases.

82. If any Lot described as held by Lease should [*otherwise than in the abstract*] appear to be held by underlease the Purchaser thereof shall not make any objection on this account, nor claim any compensation on account of misdescription (*e*).

As to when the purchaser is entitled to act as though the vendor had failed to perform such a condition, see *Smith v. Butler*, 1900, 1 Q. B. 694; 69 L. J. Q. B. 521. As to whether the title can be forced on a purchaser if the lessor withhold consent "unreasonably," see *Re Marshall and Salt*, 1900, 2 Ch. 202; 69 L. J. Ch. 542.

(*c*) As to the necessity for this condition, see *Re Moody and Yates* (1885), 28 Ch. D. 661; aff. 30 *ib.* 344; 54 L. J. Ch. 584, 886. In the case of a mortgage term (*e.g.*, to raise portions) created out of the fee simple there would be no lessee's covenants; in the case of a sub-term created for mortgage purposes the mortgagee, if in possession, would be able to produce the receipt for rent.

(*d*) See Note to Form No. 41, *sup.*

Purchaser of lease not bound to take underlease.

(*e*) A purchaser is not bound to take a title by underlease instead of lease: *Madeley v. Booth* (1848), 2 De G. & S. 718; *Re Beyfus and Masters* (1888), 39 Ch. D. 110; unless the particulars and conditions are sufficient to give him notice of the underlease: *Camberwell Building Society v. Holloway* (1879), 13 Ch. D. 754; 49 L. J. Ch. 361. An underlease may generally be known by its being for a term less a few days, or by the rent being reserved to or the covenants being entered into with the executors and administrators, and not the heirs. This condition is depreciatory on a sale by trustees unless it is not known what lots are held by underlease: *Re Rayner* (1885), 53 L. T. 495; but see as to depreciatory conditions, T. Act, 1893, s. 14.

83. No objection shall be made on account of the covenants by the tenant in any underlease not corresponding with the covenants by the lessee in the Lease under which the property is held (*f*).

As to covenants where leaseholds subject to underleases.

84. No objection shall be made on account of any document executed before the 17th May, 1888, being unstamped or not sufficiently stamped, and any such document which the [a] Purchaser requires to be stamped or further stamped shall be procured to be so stamped by him and at his expense (*g*) [but the Vendor is not aware of any such document].

Unstamped documents:

85. No objection shall be made on account of any document executed before the 17th May, 1888, being unstamped or insufficiently stamped (*h*), or on account of any document not being registered in the — Deeds Registry, and any such document which the [a] purchaser requires to be stamped or further stamped or registered shall be procured to be so stamped or registered by him and at his expense.

Unstamped or unregistered documents.

#### SECTION IV.

##### *As to Identity and Matters arising on the Particulars.*

86. No further or other evidence shall be required of the identity of the property [Lot or Lots] described in the particulars with the property to which title is shown by the abstract besides such evidence (if any) as may be gathered from the descriptions in the documents abstracted; [but the [any] Purchaser shall be furnished at his own expense, if he so require, with a statutory declaration [by the Vendor or some other person] that the property has [*or* Lot or Lots have] for twelve years or upwards next preceding the day of sale been held and enjoyed in accordance with the title shown thereto (*k*)].

Identity (*i*)

(*f*) If the covenants in an underlease are not as wide as those in the head lease it may give rise to a forfeiture, and the lessee might not have a remedy over against the underlessee.

(*g*) This condition is useless as regards any instrument executed before the passing of the Customs and Inland Revenue Act, 1888: Stamp Act, 1891, s. 117; Highmore, 2nd ed., 210. The vendor's obligation to stamp extends to agreements with tenants: *Coleman v. C.* (1898), 79 L. T. 66; and see Dart, 7th ed., 186. Where this condition is used see that the contract is stamped at the time of execution.

Vendor's obligation to stamp documents.

(*h*) See last note.

(*i*) See Dart, 7th ed., 170 *et seq.*; *Curling v. Austin* (1862), 2 Dr. & Sm. 129; this condition will be used in almost every case.

(*k*) This last paragraph should only be inserted when it is possible to

As to distinguishing titles and tenures.

87. THE Vendor shall not be required to distinguish the parts of the property [any Lot] held under different titles, nor to distinguish the freehold from the copyhold part of the property [any Lot], nor to distinguish copyholds of different manors (*l*).

As to exceptions in documents.

88. WHEREVER in any document there is a general exception of any hereditaments which have been previously sold, the Purchaser shall assume that such excepted hereditaments did not include any part of the property comprised in the particulars (*m*).

Tithe merged.

89. THE rectorial tithes on the property were [with the concurrence of the Board of Agriculture and Fisheries] merged in the year ——. The abstract of title thereto shall commence with an Indenture dated the — day of —, and the Purchaser shall not require the production of the original nor any abstract or copy of the grant from the Crown of these tithes, nor any information as to the date of such grant, or otherwise with reference thereto (*n*).

Evidence of land being tithe free.

90. THE Purchaser shall require no other evidence that the several Lots are free from tithe rent-charge (*o*) than a statement to that effect in the — Inclosure Award, [or than a statutory declaration by the Vendor or his agent (to be made at the Purchaser's expense) that no tithes, or tithe rent-charge, have been paid for the same for twelve years prior to the day of sale].

obtain the required statutory declaration. In the case of sales by private contract for "property described in the particulars" read "property hereby agreed to be sold."

Obligation to distinguish titles.

(*l*) Without this condition the vendor must, it would seem, distinguish the various parts of the property: *Monro v. Taylor* (1848), 8 Hare, 81; 3 Mac. & G. 713; 21 L. J. Ch. 525; and see Dart, 7th ed., 171. Where copyholds are indistinguishable from freeholds it is desirable to enfranchise to avoid difficulties.

(*m*) These general exceptions are undesirable, but on some occasions it may be difficult to avoid using them. Usually they may be rendered unnecessary by employing a general description, *e.g.*, "the hereditaments now subject to the limitations of the settlement," or "now subject to redemption under the mortgage," or the excepted property may be scheduled.

(*n*) As to tithe rent-charge and merger generally, see Dart, 7th ed., 395 *et seq.*

When property is tithe free.

(*o*) Where a vendor is owner of lands, and of the tithes issuing out of them, but the tithes have not been merged, the particulars ought not to state the lands as tithe free, but should provide for the conveyance of the tithes. If they are not conveyed, it seems that the vendor would be entitled to claim them from the purchaser.

A property may be tithe free in virtue of a prescriptive composition, commonly called a *modus decimandi*, or by reason of a composition made under an Inclosure Act, or by merger or redemption under the Tithe Acts, 1836 to 1891.

91. THE Purchaser shall not require production of the original, nor any abstract or copy, nor any other evidence of or information with respect to the grant from the Crown of the tithes. [*Add, if required, nor any evidence that the tithes are not, &c., continue as in the next condition.*]

Crown grant of tithes.

92. THE Vendor shall not be required to furnish any evidence that the rectorial tithes are not subject to the repair of the chancel of the Parish Church of —, and the purchaser shall take subject to such liability (if any) as exists in respect to such repair.

Repair of chancel.

93. THE redemption of the land tax will be shown by production of the certificate of the contract dated in the year —, and no objection shall be made on account of the acreage therein appearing not to correspond with that stated in the particulars (p).

Evidence of redemption of land tax.

94. FREEDOM from land tax (q) or tithe rent-charge shall be deemed sufficiently evidenced by the fact that the land tax assessment books or the tithe commutation award (if any), as the case may be, do not show any land tax or tithe rent-charge to be payable, or by the absence of any such books or award [but the Purchaser shall be furnished at his own expense, if he so require, with a statutory declaration that no land tax or tithe rent-charge has been paid for twelve years or upwards next before the day of sale (r)].

Freedom from land tax and tithe rent-charge.

95. THE receipt for the last payment made in respect of land tax and tithe rent-charge, where payable, shall be sufficient evidence of the amounts.

Last receipt evidence of amount of land tax and tithe.

96. THE Vendor shall not be required to obtain the apportionment of any land tax or tithe rent-charge (s).

No apportionment of land tax and tithe rent-charge.

97. THE Vendor shall not be required to obtain the legal apportionment of any land tax or tithe rent-charge, but as between the Vendor and Purchaser the tithe rent-charge on the property comprised in the particulars shall be deemed to be apportioned at the sum of £—— (being part of the tithe rent-charge of £—— payable in respect of —), and the Purchaser shall in his

Where the tithe rent-charge is to be taken as apportioned

(p) See Dart, 7th ed., 393 *et seq.*

(q) In the absence of any condition or statement in the particulars the purchaser will take subject to land tax and tithe rent-charge.

Redemption of land tax.

(r) This last paragraph should be inserted only when it is possible to obtain the required declaration.

(s) Even apart from any condition, a purchaser cannot require the vendor to procure an apportionment of tithe rent-charge affecting the land sold and also other land *not* belonging to the vendor: *Re Ebsworth and Tidy* (1889), 42 Ch. D. 23; 58 L. J. Ch. 665; Dart, 7th ed., 396.

Apportionment of tithe rent-charge

conveyance covenant to pay the said apportioned tithe rent-charge and to use his best endeavours forthwith to obtain a legal apportionment on that footing free of expense to the Vendor.

Apportion-  
ment of land  
tax and tithe  
rent-charge.

98. IN all cases where an entire sum for land tax, tithe rent-charge, or other outgoings is payable in respect of the lands comprised in two or more Lots, the same shall be deemed to be apportioned amongst such Lots, in the amounts mentioned in the particulars, at the foot of each Lot respectively; and such apportionment shall be accepted by and be binding upon the respective Purchasers, who shall in their conveyances covenant to pay the amounts so apportioned respectively; and anything that may be requisite for giving effect to such apportionment shall be done at the cost of the Purchaser requiring the same; but the completion of any purchase shall not be delayed on account of any such requisition (t).

Right of way  
over one Lot  
for benefit of  
another.

99. Lot — is sold subject to the rights of way to be given to the Purchaser of Lot — as mentioned in the particulars, or to be reserved to the Vendor if the last-mentioned Lot be not sold, and effect shall be given to this condition by conveying the land to the Purchaser in fee simple to the use that the Purchaser of Lot — or the Vendor (as the case may require) shall have the said rights and subject thereto to the use of the Purchaser in fee simple. And the Purchaser shall give to the Purchaser of Lot — or to the Vendor (as the case may require) a separate acknowledgment of his right to production of the conveyance and an undertaking for the safe custody thereof.

Easements,  
restrictive  
covenants,  
fences, &c.

100. THE property is [the several Lots are] sold and shall be conveyed (u) subject to [the restrictive covenants contained in an

(t) Land tax should be redeemed before an estate is developed for building purposes; it is also more convenient to redeem the tithe rent-charge.

A vendor's  
liability under  
covenants  
for title.

(u) A vendor, who has expressly or impliedly covenanted for title without any restriction on his obligations, is liable for damages in respect of a right of way which he inadvertently failed to disclose to his purchaser: *Turner v. Moon*, 1901, 2 Ch. 825; 70 L. J. Ch. 822. A vendor is also liable for defects of which his purchaser has notice or which in fact appear on the face of the conveyance, unless he has so worded his covenant as to exempt such defects from his obligation, or has inserted a clause clearly explaining and controlling his covenant: *Page v. Mid. Ry.*, 1894, 1 Ch. 11; 63 L. J. Ch. 126; *G. W. Ry. v. Fisher*, 1905, 1 Ch. 316; 74 L. J. Ch. 241; and see *May v. Platt*, 1900, 1 Ch. at p. 621; 69 L. J. Ch. 357; see also *Wolst. Conv. Acts*, 9th ed., 37, and *Dart*, 7th ed., 794. Hence, though this is a departure from the practice hitherto maintained in regard to easements, the conveyance should either be made subject to all defects known to the vendor, whether the purchaser has

Indenture dated the — day of —, a copy of which can be inspected at the office of the Vendor's solicitors for fourteen days next before the date of the sale during office hours or in the sale-room at the time of sale and to] all quit, chief and other rents, rights of way, light and other easements (if any), affecting the same, and to any subsisting liability to repair party walls (*x*), fences, roads or streets [and the [each] Purchaser shall in his conveyance covenant to keep the Vendor and his estate and effects indemnified from all claims in respect of any breach of the covenants contained in the said Indenture or any of them, so far as they affect the property [the Lot purchased by him] (*y*).

101. THE respective Lots are sold and will be conveyed subject to the covenants and stipulations (if and so far as they are now capable of being enforced) entered into by A. B. when he purchased from C. D. and contained in an Indenture dated the — day of —, being an Indenture of even date with the conveyance to the said A. B., and also to the covenants and stipulations mentioned or referred to in a second Indenture of the same date, whereby the said A. B. covenanted to indemnify the said C. D. from any liability (in respect of previous restrictive covenants) to certain other Purchasers from him named in the schedule to such Indenture. The property so purchased by A. B. was immediately after his purchase conveyed by him by way of mortgage to mortgagees through whom the Vendor derives title, and who sold under their power of sale, and a statutory declaration will be produced made by the solicitor of such mortgagees showing that the mortgagees had no notice of the last-mentioned Indenture or of the restrictive covenants therein referred to. The Vendor has been advised that there is in fact no subsisting liability affecting the Lots under the said Indenture or the covenants therein referred to. Copies of the said two Indentures of — and of the statutory declaration may be notice of them or not, or an express provision should be inserted in the conveyance limiting the vendor's liability under his covenants for title; see Form No. 119, *inf*.

(*x*) See *Jones v. Pritchard*, 1908, 1 Ch. 630; 77 L. J. Ch. 405; *Curlish v. Sault*, 1906, 1 Ch. 335; 75 L. J. Ch. 175.

(*y*) See *Re Poole and Clarke*, 1904, 2 Ch. 173; 73 L. J. Ch. 612; Dart, 7th ed., 582, as to the form of indemnity. No indemnity is required if the covenants are so framed that an owner is discharged from liability when he parts with his interest. Nor where the Vendor has not himself entered into the covenants or given an indemnity.

(*z*) See Dissertation, pp. 116—21, *sup*.

Restrictive covenants, Vendor having purchased without notice of some of them (*z*).

When indemnity against restrictive covenants not required.

inspected at the offices of the Vendor's solicitors during office hours for fourteen days next preceding the sale, and Purchasers shall be deemed to have notice of the contents thereof, and shall not make any objection or requisition in respect of such liability (if any) as may appear by the said Indentures to affect the Lots now offered for sale, and shall be bound to assume that there is no liability affecting the said Lots arising in respect of any restrictive covenant entered into on any sale made by the said C. D. previous to the year —.

Origin of quit rents.

102. No information shall be asked for, nor shall any inquiry be made as to the origin or creation of any quit, fee farm, or chief rent, whether mentioned in the particulars or not (*a*).

Where property is sold subject to perpetual rent-charge.

103. THE property is sold subject to a perpetual yearly rent-charge of £5 created by an Indenture dated —, and to the restrictive and other covenants and conditions therein contained. A copy or abstract of the said Indenture can be inspected at the office of the Vendor's solicitors during a period of fourteen days next preceding the day of sale or in the sale-room at the time of sale (*b*), and the Purchaser shall be deemed to have notice of the contents of the said Indenture whether he inspects the same or not. The receipt for the last payment of the rent-charge shall be accepted by the Purchaser as conclusive evidence of the performance and observance of the covenants and conditions up to the completion of the purchase (*c*). The Purchaser shall in his conveyance enter into the usual covenant to pay the said rent-charge and observe and perform the said covenants and conditions and to keep the Vendor indemnified.

Equitable apportionment of perpetual rent-charge issuing out of the property sold, and other property of the Vendor.

104. THE whole of the property comprised in the particulars, together with other property of the Vendor not included in this sale, is subject to a perpetual yearly rent-charge of £—. Each of the Lots shall be held subject to such proportion of the said rent-charge as is specified in the particulars, and each Purchaser shall enter into a covenant with the other Purchasers and with the Vendor for the payment of the covenantor's proportion of the rent-charge, and to indemnify the covenantees against the same, but no legal apportionment shall be required. If any of the Lots be not sold, the Vendor shall for the purpose of this condition stand in the place of the Purchaser of the unsold Lot

(*a*) The particulars should state that the rent-charge is payable.

(*b*) An opportunity of inspecting the deed should be given before the day of sale: *Dougherty v. Oates* (1900), 45 Sol. J. 119.

(*c*) *Cf.* Conv. Act, 1881, s. 3 (4), in regard to leases, and Form No. 41, *sup.*

or Lots. The residue of the rent-charge shall remain exclusively charged on the property retained by the Vendor, and he shall in respect thereof enter into similar covenants with the several Purchasers. Every deed of covenant under this condition shall be prepared by and at the expense of the covenantee. The receipt for the last payment of the said rent-charge due before the day of sale shall be accepted as conclusive evidence that all the covenants and conditions contained in the Indenture creating the said rent-charge have been duly observed and performed up to the day of sale.

105. THE fee farm rent of £—— mentioned in the particulars shall, as between the Vendor and Purchasers, be charged exclusively on Lot ——, and the Purchaser of that Lot shall covenant with the Purchasers of the other Lots charged therewith to pay the same, and to keep them indemnified against all claims and expenses occasioned by non-payment thereof. All covenants required under this condition shall be prepared and executed by the covenantee at his own expense, and shall be perused on behalf of and executed by the covenantor at his own expense, but no legal or other apportionment shall be required for the purpose of this condition. If the other Lots charged or any of them be not sold at this sale the Vendor shall be entitled to the covenants to which, if sold, the respective Purchasers thereof would have been entitled, and if Lot —— be not sold at this sale the Vendor will, until sale, make the payments which the Purchaser thereof would have been bound to make under this condition, but will not enter into any covenant for such purpose (*d*).

Equitable apportionment of fee farm rent.

106. THE messuage now offered for sale is one of four messuages conveyed by an Indenture dated the —— day of ——, being, &c., in consideration of a perpetual rent of £4 thereby reserved, and subject to the restrictive and other covenants and conditions therein contained. The said Indenture may be inspected at the office of the Vendor's solicitors on any day before the sale during office hours, and whether the Purchaser inspects the said Indenture or not, he shall be deemed to have notice of all the contents thereof. The said messuage was subsequently conveyed to the Vendor subject

On sale of dwelling-house, subject to proportion of perpetual rent-charge.

(*d*) To effect a legal apportionment the concurrence of the owner of the rent would be requisite. In these conditions "fee farm rents" mean ancient rents strictly so called arising as incidents of tenure. In Lancashire and Bristol perpetual rent-charges reserved on recent grants for building purposes are incorrectly termed fee farm rents.

Fee farm rents.

to a yearly sum of £1, part of the said rent-charge, and to the aforesaid covenants and conditions, so far as they affected the same, and mutual covenants for indemnity were entered into by each party in respect of the payment of the rent, and the observance of the covenants. The present sale is made on the footing of the above arrangement, and the Purchaser shall covenant to keep the Vendor indemnified from his liability under the said covenants (e).

On sale under  
Private Street  
Works Act.

107. THE Vendors, who are selling under the provisions of the Private Street Works Act, 1892, will deliver to the Purchaser an abstract setting out the resolutions and proceedings of the Vendors in reference to the private street works mentioned in the particulars, so as to show that the requirements of the Act have been duly complied with (f).

Purchaser to  
repay outlay  
required by  
local authority.

108. IF before the completion of the purchase the Vendor shall expend money in complying with requirements in respect of the property enforceable against him, and made [either before or] after the sale by the municipal corporation or other local authority of the borough or district within which the property is situated, whether as to sanitary or street works or otherwise, or if before the completion of the purchase the Vendor shall pay to the local authority such part of the expenses charged on the property in respect of any works effected or resolved upon [either before or] after the sale by the local authority, the Purchaser shall, on the completion of the purchase, repay to the Vendor the amount so expended, with interest thereon at the rate of £— per cent. per annum from the date of payment, and in case any such requirement shall not have been complied with

Sales by  
trustees re-  
serving a  
rent by way of  
indemnity.

(e) Generally trustees cannot sell in consideration of a rent-charge: Sugden on Powers, 8th ed., 864; Farwell on Powers, 2nd ed., 553. But where the land is already subject to a rent-charge and part of the land is sold at an equitably apportioned rent, there is probably no objection to the land being conveyed to the use that the trustees shall receive a rent by way of indemnity and subject thereto to the use of the purchaser in fee simple subject to a proper proportion of the rent: Copinger on Rents, 94.

Municipal  
corporations.

The Municipal Corporations Act, 1882, authorises municipal corporations with the consent of the Local Government Board to sell in consideration of a perpetual rent-charge: *Scarborough Corpn. v. Cooper*, 1910, 1 Ch. 68; 79 L. J. Ch. 38.

Sale under  
Private Street  
Works Act.

(f) S. 13 of the Private Street Works Act, 1892, gives the local authority, in respect of charges created under the Act, the powers of a mortgagee under the Conv. Act, 1881, when the owner makes default in payment. See also *West Ham Corpn. v. Sharp*, 1907, 1 K. B. 445; 76 L. J. K. B. 307.

before the completion of the purchase, the Purchaser shall covenant to indemnify the Vendor in respect thereof, and shall charge the property with such indemnity, but the Vendor upon receiving notice of any such requirement shall inform the Purchaser thereof, and give to him the option of complying therewith within a reasonable time (g).

109. THE Leases of Lots — to — inclusive and Lot —, which, as stated in the particulars, have attached to them a right of user of a square or garden, do not contain any grant of such right, the Leases having been granted at a time when there was only a contract with the freeholder for a Lease of the square or garden. The required Lease of the square or garden from the freeholder to the Vendor will be granted, and if granted before completion will be produced to each Purchaser, and the assignment to each Purchaser may contain, where necessary, an express assignment by the Vendor of such right of user, but the Vendor shall not be required to show any title beyond the Lease of the square or garden when granted, and shall not be required to produce the contract to grant the same or any other title thereto, nor shall any objection or requisition be made by any Purchaser on account of there being no grant of any such right in the Lease of the Lot purchased by him or otherwise in reference to the title of such right to have the Lease of the square or garden (when granted) produced. Nor shall any completion be delayed by reason of such Lease not having been granted. A copy, signed by the Vendor's solicitors, of the form in which the right of user is to be assigned and of the covenants to be entered into by each Purchaser securing payment to the Vendor of the square or garden rate and charging it on the Lot assigned, and of the provisions to be made with respect to the exercise of the right, may be seen at the office of the Vendor's solicitors during fourteen

Right of user of garden not contained in Lease.

(g) Expenses incurred by a local authority become a charge upon the property on the completion of the works and before the final apportionment: *Stock v. Meakin*, 1900, 1 Ch. 683; 69 L. J. Ch. 401; *Surtess v. Woodhouse*, 1903, 1 K. B. 396; 72 L. J. K. B. 302; *Lumby v. Faupel* (1904), 90 L. T. 140; *Re Allen and Driscoll*, 1904, 2 Ch. 226; 73 L. J. Ch. 614; *Millard v. Balby, &c. Council*, 1905, 1 K. B. 60; 74 L. J. K. B. 45; *East Ham U. D. C. v. Aylett*, 1905, 2 K. B. 22; 74 L. J. K. B. 471. Omission to mention in the particulars the fact that the vendor has been served with notices by the local authority would, it seems, entitle the purchaser to compensation, if he can show that the value of the property is thereby affected: *Re Leyland and Taylor*, 1900, 2 Ch. 625; 69 L. J. Ch. 764; and in some cases to rescind the contract, see *Carlsh v. Salt*, 1906, 1 Ch. 335; 75 L. J. Ch. 175.

Charges in favour of local authority.

days next preceding the day of sale, and each assignment shall be made in such form as nearly as the circumstances permit.

## SECTION V.

### *As to the Conveyance and its Contents.*

Part of the purchase-money to remain on mortgage.

110. THE [Each] Purchaser shall have the option, exercisable by notice in writing to be given to the solicitors of the Vendor[s] within fourteen days from the day of sale, of leaving on mortgage of the property [Lot or Lots purchased by him] a part (the amount to be specified in the notice) not exceeding two-thirds of the purchase-money [including the valuation], the rate of interest to be £— per cent. per annum, and the deed of mortgage to be prepared by the solicitors of the Vendor[s], and to be in such form, and to contain such covenants and provisions [including a provision for the continuance of the loan for a period of — years, provided interest is punctually paid in the meanwhile], as may be reasonably required by the solicitors of the Vendor[s], and to be executed by the Purchaser immediately after the execution of the conveyance to him, and all the costs and charges of the solicitors of the Vendor[s] of and incidental to the preparation and completion of the mortgage shall be paid by the Purchaser at the time of completion (*h*).

Balance of purchase-money payable by instalments.

111. IF the [any] Purchaser shall within fourteen days from the day of sale give to the solicitors of the Vendor[s] notice in writing of his desire to pay the balance of his purchase-money by [half] yearly instalments, and shall on or before the day fixed for completion sign an agreement in the form (*i*), which can be obtained from the solicitors of the Vendor[s], or inspected in the sale-room at the time of sale, and which provides for payment of such balance by — equal instalments with interest at the rate of £— per cent. per annum on the amount unpaid, then the signing of such agreement on or before the day fixed for completion shall, for the purpose of giving possession, be equivalent to payment on the day fixed for completion of the whole balance of the purchase-money, but the title deeds will be retained by

(*h*) Where the property is in a compulsory district, this Form must be varied, see separate part of this vol. relating to registered land. In the case of land in a compulsory district L. T. R., r. 96, enables the purchaser to execute a charge before he is registered as first proprietor.

(*i*) See Prec. IV. Agreements for Sale, p. 211, *inf*.

the Vendor[s], and the conveyance shall not be executed until all the instalments and interest have been paid (*k*).

112. THE Purchaser shall have the option of paying the balance of the purchase-money by six equal half-yearly instalments of £—— in manner following (that is to say): one instalment of £—— on the —— day of —— next, on which day the purchase shall be completed, and the remaining instalments with interest at the rate of £4 per cent. per annum on the balance of the purchase-money remaining unpaid by five equal half-yearly payments from the date fixed for completion. If default shall be made in the payment of the whole or part of any instalment for thirty days after the day appointed for payment thereof the whole of the purchase-money and interest shall immediately become due and payable. The Purchaser on completion shall execute a mortgage of the property to the Vendor as security for the payment in manner aforesaid of the unpaid instalments and interest, and the mortgage shall be prepared by the Vendor at the Purchaser's expense, and shall contain all such powers and provisions as the Vendor may reasonably require (*l*).

Power for Purchaser to pay part of purchase-money by instalments to be secured by mortgage.

113. INASMUCH as the title to the property is defective and incapable at present of being confirmed, the purchase-money shall be paid by the Vendor to two trustees (one to be nominated by the Vendor and the other by the Purchaser) to form an indemnity fund to the Purchaser against all claims which may be made for —— years from the date of completion. The trustees shall invest the purchase-money in any investments from time to time authorised as investments for trust money, and shall have power to vary investments, and, subject to satisfying such indemnity as aforesaid, shall hold the indemnity fund and the income thereof upon trust to pay the

Condition for investment of purchase-money as indemnity for Purchase against defect in title.

(*k*) Failure to pay the last instalment will not necessarily amount to repudiation of the contract: *Cornwall v. Henson*, 1900, 2 Ch. 298; 69 L. J. Ch. 581. Unless there is a distinct refusal by one party to be bound by a contract in the future, the principle is that you must ascertain whether the action of the party who was breaking the contract was such that the other party was entitled to conclude that the former no longer intended to be bound by its provisions: *Rhymney Ry. Co. v. Brecon and Merthyr Tydfil J. Ry. Co.* (1900), W. N. 169; 69 L. J. Ch. 813. Where the vendor is bringing an action for specific performance, he may obtain a declaration of lien for both the arrears and future instalments: *Nicks v. N.* (1880), 15 Ch. D. 649; 49 L. J. Ch. 674; and see Dart, 7th ed., 739.

Payment of purchase-money by instalments.

(*l*) See note to last Form.

annual income thereof during the said — years to the Vendor and after the expiration of that period as to both capital and income In trust for the Vendor absolutely discharged from any claim of the Purchaser on account of any adverse claim or demand respecting the title to the property which may arise after the expiration of that period. But if the defect in title shall at the expense of the Vendor be remedied to the reasonable satisfaction of the Purchaser before the expiration of the said period, then the indemnity fund and the income thereof shall forthwith be held In trust for the Vendor absolutely discharged as aforesaid. On the completion of the purchase, a declaration of trust shall be executed for giving effect to this clause, and the same shall be prepared by and at the expense of the Purchaser.

Condition for repurchase by Vendor on failure to remedy defect in title.

114. INASMUCH as [*state the defect in title*] a provision shall be inserted in the conveyance to the effect that if the Purchaser or the persons deriving title under him shall at any time within the period of twenty-one years from the date of the conveyance, give to the Vendor or his executors or administrators at least six calendar months' notice of his or their desire to sell the property by reason of a claim having been made in respect of the said defect, and if within such six months the said defect in title be not remedied, then the Vendor or his executors or administrators shall repurchase the property at the said price of £—, and upon such repurchase the property shall be delivered up in as good repair and condition as the same was in at the date of the conveyance (*m*).

Where Vendor is tenant for life or limited owner.

115. THE Vendor sells and will convey as a [person having the powers of a] tenant for life under the Settled Land Acts, 1882 to 1890, the trustees for the purposes of the Acts joining in the conveyance only for the purpose of acknowledging the receipt of the purchase-money, and the [a] Purchaser shall not require any covenant for title by the Vendor except the statutory covenant implied by the Vendor conveying as beneficial owner, with a proviso limiting the same so far as regards the reversion or remainder expectant on his life estate, and the title to and further assurance of the premises after his death, to the acts and defaults of himself and persons deriving title under him (*n*).

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(*m*) A right to repurchase in a conveyance does not turn the transaction into a mortgage, if such does not appear to have been the intention of the parties: Dart, 7th ed., 834.

(*n*) As to the extent of the implied covenants for title by a tenant for life,

116. THE Vendor, being a [mortgagee or trustee or an executor], shall be required to give only the statutory covenant implied by reason of his being expressed to convey as [mortgagee or trustee or personal representative], and no other covenant for title shall be required (o).

Covenant by Vendor as mortgagee or trustee.

117. THE Vendors being tenants in common, each of them will make himself liable under covenants for title implied by reason of his conveying his own undivided share of the property as beneficial owner, and not further.

Covenants for title by tenants in common.

118. THE Vendors being beneficially interested as joint tenants, will convey the entirety as beneficial owners, and as regards the share to which each Vendor would be entitled on a severance each Vendor will convey as beneficial owner [or each of them will make himself liable under covenants for title implied by reason of his conveying as beneficial owner the undivided share to which he would be entitled on a severance, and no joint covenants shall be required from them] (p).

By joint tenants.

119. THE statutory covenant to be implied in the conveyance by the Vendor conveying as beneficial owner shall be so limited as not to extend to the following matters, namely:—[*Here set out the liabilities to which the covenants are not to extend*](q).

Proviso restricting the Vendor's implied covenants for title.

120. A separate release of any incumbrance shall not be required, nor shall any objection be made on the ground of expense or otherwise to any incumbrancer joining in the conveyance (r).

Incumbrancers not to be required to release by separate instrument.

121. THE property is sold subject to a mortgage dated in the year 19—, under which the principal sum of £— with interest at £— per cent. per annum is now secured. Notice to pay off the principal sum will be given immediately after

Where the Purchaser buys the equity of redemption only.

selling under the S. L. Acts, 1882 to 1890, see Dart, 7th ed., 571. The latter part of this condition only expresses what is the rule in the absence of a condition; the practice is well settled.

(o) Where the vendor is a trustee selling at the request of the tenant for life the latter must covenant for title, unless the contrary is clearly expressed in the contract: *Earl Poulett v. Hood* (1868), L. R. 5 Eq. 115; 37 L. J. Ch. 224; *Re Sawyer and Baring's Contract* (1884), W. N. 192; 53 L. J. Ch. 1104.

Covenants for title by beneficiary on sale by trustees.

(p) See Dart, 7th ed., 573. Corporate bodies can hold property as joint tenants with individuals and as co-trustees: *Bodies Corporate (Joint Tenancy) Act*, 1899; and see *Re Thompson*, 1905, 1 Ch. 229; 74 L. J. Ch. 133.

(q) See first note to Form No. 100.

(r) If the property is subject to incumbrances at the date of the contract, they must either be got in by a separate deed at the vendor's expense before the conveyance, or if they are released by the deed of conveyance the

Expense of getting in incumbrances.

the sale, and the Purchaser shall at the expiration of the notice pay the same and all interest due thereon and all costs, and shall at his own expense procure the Mortgagee to reconvey or to join in the conveyance to the Purchaser, who shall be allowed as a deduction out of his purchase-money the amount of the principal sum paid and all interest accrued due thereon and costs incurred before the said — day of — [the day for completion], from which day he shall pay all interest, but shall be allowed such interest by way of deduction from the interest (if any) on his purchase-money, and (if he requires it) he shall at his own expense procure for verification of the abstract or any other purpose production of all documents of title in the hands of a Mortgagee (s), and shall not require the same to be delivered over until the mortgage is satisfied [and if he cannot procure production he shall accept such verification (if any) of the abstract as the Vendor is able to furnish], and the conveyance to the Purchaser, if made before the mortgage is paid off, shall contain a covenant by him to indemnify the Vendor against all claims for principal money, interest, or costs due or to become due thereunder.

Free form of  
conveyance.

122. A form of conveyance [settled by counsel (t)] shall be furnished to the Purchaser [with the abstract], and, so far as circumstances permit, the parties shall follow such form, but the conveyance to the Purchaser shall be prepared by him and at his own expense, and the engrossment thereof shall be delivered at the office of the Vendor's solicitors at least ten days before the date fixed for completion of this contract for execution by the Vendor and other necessary parties (if any) and the draft of such conveyance for perusal and approval on behalf of the Vendor and other necessary parties (if any) is to be left at the said office at least seven days before delivery of the engrossment.

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expenses of the purchase deed, so far as they are increased by the concurrence of the incumbrancer in the same deed, may be thrown on the vendor: Sug. V. & P., 14th ed., 448; *Reeves v. Gill* (1838), 1 Beav. 375. But the purchaser would not be entitled to throw such expense on the vendor when the mortgage debts are kept on foot for the purchaser's protection; and see Dart, 7th ed., 530, 723.

(s) See note to Form 142, *inf.*

(t) If the purchaser is debarred from investigating title, special care must be taken that the conveyance is in the proper form and gives the purchaser his full rights subject to the express conditions:

123. ANY Purchaser, who is willing to accept the Vendor's title as shown by the abstract without making any requisition in respect thereof (*u*), may, on signifying his wish in writing to the Vendor's solicitors within — days after the delivery of the abstract to him, have a deed of conveyance (in a form already settled, and which will be produced at the sale) executed and delivered to him free of cost, except stamp duty and a fee of £——.

Conveyance to be furnished to Purchaser at a fixed sum.

124. THE Vendor shall be entitled to a duplicate of the conveyance, which shall be prepared and stamped at the expense of the Vendor, but shall be executed by the Purchaser free of expense to the Vendor. The Purchaser shall at the request of the Vendor, and free of expense, produce the principal conveyance for the purpose of enabling the Vendor to have the duplicate properly stamped (*x*).

Vendor to be entitled to duplicate conveyance.

125. THE property is sold and will be conveyed subject to certain covenants restrictive of the user thereof or otherwise contained in an Indenture dated the — day of —, [and entered into by the Vendor when he purchased the property.] A copy of these covenants may be seen during the period of seven days next preceding the day of sale at the office of the Vendor's solicitors, and will be produced at the sale. [The conveyance to the Purchaser shall contain covenants by him with the Vendor similar to those given by the Vendor as aforesaid, and to indemnify the vendor against any breach of the same, and the Purchaser shall at his own expense, if required by the Vendor, execute and deliver to the Vendor a duplicate of such conveyance, and shall also at his own expense produce the principal conveyance for the purpose of having the duplicate stamped (*y*).]

Conveyance to be subject to existing restrictive covenants.

(*u*) If these words are omitted, a purchaser, by merely accepting a free conveyance, would not waive his right to investigate the title: *Re Pelly and Jacob* (1899), 80 L. T. 45.

(*x*) This condition will be required, *e.g.*, where restrictive covenants are imposed or any rights are given or reserved to the vendor. As an alternative the obligation of giving to the vendor a separate acknowledgment and undertaking for production and safe custody of the conveyance may be imposed on the purchaser.

(*y*) If the Vendor has entered into any covenants he will require to be indemnified unless he is freed by the terms of the covenants when he parts with his interest. In other cases an indemnity is not required. See also Form No. 101. Restrictive covenants must be disclosed: *Nottingham Brick Co. v. Butler* (1886), 16 Q. B. D. 778; 55 L. J. Q. B. 280; *Re Elsworth and Tidy* (1889), 42 Ch. D. 23; 58 L. J. Ch. 665; *Re Cor and Neve*, 1891, 2 Ch.

Restrictive covenants.

Lots to be made subject to conditions as to building, &c.

126. THE several Lots are to be made subject to [the conditions as to building and otherwise mentioned in the particulars or] the following conditions as to building and otherwise<sup>(z)</sup>: (namely,)

(1) Every Purchaser shall, within one calendar month after the completion of his purchase, erect and for ever afterwards maintain a good and sufficient fence on that side of the Lot purchased by him which is marked 'T' on the plan annexed to the particulars.

(2) No building or erection shall be set up on any Lot nearer to the road in front thereof than is indicated by the line marked on the plan "building line."

(3) No building of any kind other than private dwelling-houses, with appropriate offices and out-buildings to be appurtenant thereto and occupied therewith, shall be erected on any Lot, and no trade or business of any kind shall be carried on upon any part of any Lot.

(4) No more than two houses shall be erected on any one Lot, and every house shall be either detached or semi-detached, and the cost, reckoned at the lowest current prices in labour and materials, of each house shall be not less than £—— for a detached house, or £—— for a pair of semi-detached houses.

(5) The Purchaser of each Lot shall pay a proportionate part of the expense of keeping in repair the road in front thereof according to the extent of the frontage until the road shall be declared to be a highway repairable by the inhabitants at large, such proportion to be determined in case of difference by the Vendor's surveyor [or by the surveyor to the District Council] (a).

109; *Wanton v. Coppard*, 1899, 1 Ch. 92; 68 L. J. Ch. 8; *Pensel v. Tucker*, 1907, 2 Ch. 191; 76 L. J. Ch. 621; Dart, 7th ed., 152; unless the covenant has been waived: *Hepworth v. Pickles*, 1900, 1 Ch. 108; 69 L. J. Ch. 55. As to the form of the covenant in the absence of a special condition, see *Re Poole and Clarke*, 1904, 2 Ch. 173; 73 L. J. Ch. 612; and see Dart, 7th ed., 582, 583; and notes to Form No. 101.

Conditions on sale of building plots.

(z) On a sale of building plots the conditions as to building, &c., may be either inserted in the conveyance to each purchaser or embodied in a general deed of covenants to be executed by all the purchasers. Sometimes it is intended that the covenants shall be mutually enforceable by the several purchasers *inter se*, and that for this purpose the vendor shall, as regards an unsold lot, stand in the place of a purchaser: *Reid v. Bickerstaff*, 1909, 2 Ch. 305; 78 L. J. Ch. 753. Sometimes that the covenants shall be enforceable by the vendor only, so that he may be able to release or dispense with them if he thinks fit; see *Elliston v. Reacher*, 1908, 2 Ch. 665; 78 L. J. Ch. 87. The distinction between imposing new restrictive covenants and of selling subject to conditions which are subsisting must be borne in mind.

(a) The above are given as specimens of conditions; they will, of course,

127. EVERY Purchaser shall in his conveyance covenant for himself and the persons deriving title under him [or and his successors in title (*b*)] with the Vendor to observe the above conditions [or the conditions referred to in the particulars] so far as the same apply to the Lot purchased by him, and the covenant shall be so framed that the burden thereof shall run with the land as far as may be, and for the benefit of the owners and occupiers for the time being of the — Estate [or the parts thereof for the time being remaining unsold], but the covenantor shall, as regards any covenant restrictive of the user of the land, be personally liable therefor so long only as he is owner of the land or any part thereof (*c*).

Each Purchaser to covenant with Vendor to observe conditions.

128. A deed has been prepared (a draft of which may be seen at the office of the Vendor's solicitors, on any day before the sale) containing covenants by the several Purchasers to observe the conditions mentioned in the particulars so far as the same are applicable to the several Lots purchased by them respectively [and a similar covenant by the Vendor as regards any Lot or Lots not sold]. Every Purchaser shall execute the said deed on the completion of his purchase, and his conveyance will be made subject to the provisions of that deed. The said deed, with the documents of title in the Vendor's possession, will be retained by the Vendor, who will give to every Purchaser a statutory acknowledgment of his right to production and delivery of copies thereof [and an undertaking for the safe custody thereof (*d*)].

The several Purchasers to execute a general deed of covenants.

129. THE [Each] Purchaser for himself and his assigns shall in his conveyance covenant with the Vendor (so that the covenant shall in regard to the restrictive conditions mentioned in the particulars, so far as practicable, be enforceable by the owners and occupiers for the time being of the — Estate, or the part thereof remaining unsold) that the Purchaser and the persons

Where building restrictions are to be imposed on part of an estate, the Vendor reserving a power to vary the conditions and deal generally with the estate.

be varied according to the instructions. The next form must be used when the restrictive covenants are to be inserted in each conveyance. The restrictions are usually placed in the particulars:

(*b*) On a sale a tenant for life may enter into restrictive covenants: S. L. Act, 1882, s. 4. The tenant for life cannot grant an option to purchase the release of a restrictive covenant entered into with him for the benefit of the settled land: *Palmer v. Gr. J. Waterworks* (1902), 86 L. T. 352.

Powers of tenant for life.

(*c*) The positive covenants must be allowed to affect the estate and effects of the covenantor for all time. They do not in equity affect the assigns with notice.

Positive covenants.

(*d*) The words in square brackets should be omitted if the vendor is a trustee or mortgagee.

deriving title under him will observe and perform the restrictions and stipulations mentioned in the particulars relating to building and other matters [so far as they affect the land acquired by him]. The said conveyance shall reserve a power for the Vendor and the persons deriving title under him, owners for the time being of the part of the said Estate remaining unsold, at the request of the Purchaser or the persons deriving title under him, to release or vary any of the said restrictions or stipulations. And nothing herein or in the said conveyance contained shall operate to impose any restrictions on the manner in which the Vendor or the persons deriving title under him may deal with the whole or any part of the said Estate for the time being remaining unsold or be otherwise deemed to create a building scheme, and effect shall be given to this clause in the said conveyance.

Reservation of right to deal with land unsold for building purposes.

130. INASMUCH as the property, or the greater part thereof, is bounded by other land belonging to the Vendor, the Purchaser and the persons deriving title under him shall not become entitled to any right of light and air which would in any way prejudicially affect the free and unrestricted user by the Vendor and the persons deriving title under him of any adjoining property of the Vendor for building or other purposes, and the conveyance to the Purchaser shall contain a reservation for giving effect to this condition (c).

Exception of minerals from each Lot.

131. ALL mines, minerals, and mineral substances within or under the several Lots offered for sale shall be excepted and

Light and air.

(c) There is no implied reservation to a vendor of the right of access of light and air to his adjoining property: *Wheelton v. Burrows* (1878), 12 Ch. D. 31; 48 L. J. Ch. 853; *Ray v. Hazeldeine*, 1904, 2 Ch. 17; 73 L. J. Ch. 537; and see Dart, 7th ed., 405. A contract for sale of a house with windows overlooking the land of a third party implies no reservation or warranty that the windows are entitled to the access of light over that land: *Greenhalgh v. Briudley*, 1901, 2 Ch. at p. 328; 70 L. J. Ch. 740. Where a man grants a stable adjoining land which he owns, but which is in the occupation of a lessee from him, and subsequently a grant is made of the adjoining land and the lease is merged in the freehold reversion, the grantor and the persons deriving title under him to the adjoining land will be restrained from interfering with the reasonable use of the stable by preventing the access of air: *Cable v. Bryant*, 1908, 1 Ch. 259; 77 L. J. Ch. 78. As to the law generally on light and air, see Gale, 8th ed., 315 *et seq.*; *Colls v. Home and Colonial Stores*, 1904, A. C. 179; 73 L. J. Ch. 484; *Ambler v. Gordon*, 1905, 1 K. B. 417; 74 L. J. K. B. 185; *Jolly v. Kine*, 1907, A. C. 1; 76 L. J. Ch. 1; *Hyman v. Van Den Bergh*, 1908, 1 Ch. 167; 77 L. J. Ch. 154.

reserved out of each conveyance (*f*) to the several Purchasers, together with full power for the persons entitled to such mines, minerals, and mineral substances to work and get the same [either by entry on the surface or] by underground workings, and without any obligation to leave any subjacent or lateral support for the surface or any buildings for the time being erected thereon or any adjoining land or minerals (*g*), and for the purpose of such workings from time to time or at any time, with or without horses, carts, waggons, machinery, and other implements, materials and things, to [enter upon and use the surface,] sink pits and quarries, and do all other acts and things necessary or proper for working or getting such mines, minerals, and mineral substances, but so, nevertheless, that proper compensation shall be paid to any owner of the surface or any adjoining land or minerals in respect of any damage thereto arising by reason of the exercise of the powers and rights reserved as aforesaid, and the amount of such compensation in case of dispute shall be settled by the arbitration of two arbitrators or their umpire pursuant to the provisions of the Arbitration Act, 1889, or any statutory modification thereof. Each Lot shall be conveyed to the Purchaser thereof in fee simple To THE USE that the Vendor, his heirs and assigns, shall have and may exercise the rights so reserved, and subject thereto To THE USE of such Purchaser in fee simple, and each Purchaser shall give to the Vendor a separate acknowledgment and undertaking for the production and safe custody of his conveyance.

132. THE several Purchasers shall take their conveyances subject to and with the benefit of the apportioned rents stated in the particulars, and shall not require the assent of any tenant thereto, nor otherwise require such rents to be legally apportioned (*h*).

Tenants' rents  
equitably  
apportioned.

133. WHERE any Lots are held or are to be assigned at apportioned rents, the several Purchasers shall accept their

Tenants' rents  
equitably  
apportioned.

(*f*) See Dissertation, pp. 123—6, *supra*.

(*g*) A trustee or other person, authorised to dispose of land by sale, exchange, partition, or enfranchisement, may, with the sanction of the Court, sell land with an exception or reservation of minerals: T. Act, 1893, s. 41; T. Act, 1894, s. 3; but these sections do not affect the powers conferred by the S. L. Acts, 1882 to 1890: T. Act, 1893, s. 44 (3).

Power of  
trustees to  
except  
minerals.

(*h*) This condition should be used where the consent of the tenants to an apportionment cannot be obtained. The apportionment under this condition,

Equitable  
apportion-  
ment of rents.

assignments at or subject to such apportioned rents, and shall not require the consent of the reversioner to be shown or to be obtained to the apportionment, nor require the rents to be otherwise legally apportioned (i).

Easements in favour of other Lot.

134. WHERE any Lot appears by the particulars or plan to be offered for sale subject to an easement for the benefit of any other Lot, the conveyance of the servient Lot shall be made expressly subject to the easement affecting it, and so far as practicable the conveyance of the dominant Lot shall be executed and bear date before the conveyance of the servient Lot and contain a grant of the easement, but if the servient Lot is conveyed before the dominant Lot, or the latter is not sold, then the servient Lot shall be conveyed to the Purchaser thereof in fee simple TO THE USE that the Vendor, his heirs and assigns shall have the easement, and subject thereto TO THE USE of such Purchaser in fee simple (k).

As to indemnity against perpetual rent-charges.

135. THE respective perpetual rent-charges of £— and £—, subject to which Lots — and — are respectively sold, are charged upon lands comprised in such Lots respectively, together with lands of less value comprised in other Lots, which are intended to be sold free therefrom. Lots — and — will be conveyed charged exclusively with the rents of £— and £— respectively in exoneration of the other lands affected. And if so required the Purchasers of Lots — and — shall enter into covenants with the respective Purchasers of the other Lots for the payment of the said rent-charges. Such covenants shall be prepared by and at the expense of the covenantees, and

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of course, only takes effect in equity, and does not bind the tenants: *Bliss v. Collins* (1822), 5 B. & Ald. 876. The Conv. Act, 1881, s. 12, provides for the apportionment of conditions in a lease made after 1881, where the rent is apportioned.

Leaseholds assigned at apportioned rents.

(i) This condition is used where leaseholds are to be assigned at apportioned rents, but the more usual way of making title is to sub-demise all the lots except one and to assign that subject to the new underleases: see Form No. 45.

Reservation of grants of easements *de novo*.

(k) If the conveyance of the dominant lot is executed first the vendor will grant the new easement. If the vendor retains the dominant lot there will be a reservation by way of use (as in the text) of the easement in the conveyance of the servient lot. Unless the easement is created by way of use the purchaser must execute this conveyance: *Wickham v. Hawker* (1840), 7 M. & W. 63; 10 L. J. Ex. 153; *May v. Belleville*, 1905, 2 Ch. 605; 74 L. J. Ch. 678; the vendor should either take a duplicate or obtain an acknowledgment for production.

shall be accepted by them (together with the said charges) as a sufficient indemnity against the said rent-charges (*l*).

136. Lot — is subject to a perpetual rent-charge of £—— payable to the poor of L——, which is also charged on other lands of the Vendor of considerable value. Lot — will be conveyed discharged so far as may be from the said rent-charge, and to the intent that the same shall be charged exclusively on the other lands aforesaid of the Vendor in exoneration of Lot —, and a memorandum of such charge shall be indorsed on one of the title deeds of the other lands selected by the Vendor, but he shall not be required to show title to such lands, and the Purchaser shall be satisfied with the aforesaid charge. The Purchaser shall give to the Vendor a separate acknowledgment and undertaking for the production and safe custody of his conveyance.

Vendor's charge to be indemnity against annual payment.

137. THE property is charged with a sum of £2,000, which will become payable to a son of the Vendor, now aged eighteen years, upon his attaining the age of twenty-one years, or upon the death of the Vendor (which last happens). The Vendor will enter into a covenant with the Purchaser to satisfy the charge when it shall become payable, and any interest thereon, and to indemnify the Purchaser therefrom, and will also set apart a sum of £—— out of the purchase-money and invest it in trustee investments in the names of two trustees, one to be nominated by the Vendor, and the other by the Purchaser, upon proper trusts for satisfying the said charge. The Purchaser shall accept such covenant and declaration of trust as a sufficient indemnity against the said charge, and the deed or deeds containing the same shall be prepared by and at his expense (*m*).

Part of the purchase-money to be set apart to answer charge.

138. THE whole, or nearly the whole, of estates containing upwards of — acres, devolving under the same title as and including the property now offered for sale, are charged with Lands Improvement rent-charges, not exceeding altogether the

Indemnity against Lands Improvement charges.

(*l*) As to the apportionment of rent-charges, see Dart, 7th ed., 143; and as to the discharge of rent-charges, see Conv. Act, 1881, s. 5.

(*m*) It is assumed here that the vendor prefers this course to making an application in the usual way to the Court under s. 5 of the Conv. Act, 1881, see Form No. 2, *sup*. A purchaser is not bound to make an application under that s.: *Re G. N. Ry. and Sanderson* (1884), 25 Ch. D. 788; 53 L. J. Ch. 445. Portions and jointures can now generally be over-reached under the S. L. Acts, unless the money has been raised by mortgage. If a tenant in tail while in possession bars the estate tail he would still retain the statutory powers; care must be taken in this case that there are S. L. Act trustees.

Modes of discharging or over-reaching incumbrances or family charges.

yearly sum of £—— for the remainder of terms of years not in any case exceeding —— years unexpired. The Vendor is unable to obtain a release of these rent-charges, and each Purchaser shall take his conveyance subject thereto, but with a provision in his conveyance charging the same primarily on the other lands charged therewith, and not now offered for sale, in exoneration of the land sold to such Purchaser, and the Vendor will covenant with each Purchaser to indemnify him and the land purchased by him against any claim in respect of such rent-charges, and each Purchaser shall accept such charge and covenant as a sufficient discharge of the land sold from all such rent-charges, and shall not require any release thereof.

As to one of the Vendors being an infant.

139. ONE of the Vendors, the owner of one undivided sixth part of the property offered for sale, being an infant aged eighteen years and upwards, the other Vendors will covenant with the Purchasers to use their best endeavours to obtain the execution of the conveyance by the infant when he shall attain full age; and in the meantime one-sixth of the purchase-money shall be set apart and invested in trustee securities in the names of two trustees, one to be nominated by the other Vendors and the other by the Purchaser, and shall be held by them in trust for the infant if he shall confirm the sale upon attaining full age, and if not, then in trust for the Purchaser; and the income of the investments shall in the meantime be accumulated, and follow the ultimate destination of the capital (*u*).

Assignment of mortgage term by sub-demise sold by mortgagees, the head term being got in under a power of attorney, or under the power to appoint a new trustee, or where it cannot be got in without a vesting order.

140. The Vendor will execute a proper assignment to the Purchaser, including an assignment of the principal term under the power of attorney, if and so far as the power is available, *or, where the power of attorney cannot be used* [the Vendor will assign the sub-term to the Purchaser, and will also, if so requested, appoint a person named by the Purchaser to be a trustee of the principal term in the place of the mortgagor, and vest the principal term in such new trustee by declaration under the Trustee Act, 1893], *or, where it cannot be got in without a vesting order* [the Vendor will assign the sub-term to the Purchaser, together with the benefit of the trust of the principal term]. The

Infant making title.

(*u*) This condition will only be required where there are no trustees for the purposes of the S. L. Acts, or where the purchase-money is so small as to render it advisable not to apply to the Court for an appointment of trustees, or of a person to convey: S. L. Act, 1882, ss. 59, 60; and see Conv. Act, 1881, s. 41, as to leasehold land at a rent. See Dissertation, p. 23, *sup*.

assignment to the purchaser shall be prepared by him and at his own expense, and the engrossment thereof shall be delivered at the office of the solicitors of the Vendor at least ——— days before the date fixed for completion of the contract for execution by the Vendor and other necessary parties (if any), and the draft of such assignment for perusal and approval on behalf of the Vendor and other necessary parties (if any) shall be left at the said office at least seven days before delivery of the engrossment (o).

## SECTION VI.

*As to Documents.*

141. THE Vendor will retain all documents relating to any property not comprised in this sale and retained by him (p), and will give, at the cost of the [any] purchaser [requiring it], a statutory acknowledgment of the right of the [such] purchaser to production of documents so retained, and to delivery of copies thereof, and also a statutory undertaking for safe custody thereof (q).

Documents,  
where retained  
by Vendor as  
beneficial  
owner.

142. THE Vendor will retain all documents relating to any property not comprised in this sale and retained by him, and will give, at the cost of the [any] Purchaser [requiring it], a statutory acknowledgment of the right of the [such] Purchaser to production of documents so retained, and to delivery of copies thereof, but being a mortgagee [or trustee or personal representative] shall not be required to give any undertaking or covenant for safe custody thereof (r).

Where re-  
tained by  
Vendor as  
mortgagee or  
trustee.

143. AFTER the sale of all the Lots, or of all the Lots to which any set of documents relates, as the case may be, the

Documents,  
where de-  
livered to

(o) This form will be used in connexion with Form No. 50.

(p) On a sale by a tenant for life under his statutory powers of the last of the land subject to a settlement he must arrange to retain the settlement and the appointments of new trustees.

Retainer of  
documents on  
sale by tenant  
for life.

(q) Where the vendor retains any part of an estate to which any documents of title relate, he is entitled to retain such documents: V. & P. Act, s. 2 (5). The s. includes leaseholds, but relates to land or interests in land only: *Re Williams and Duchess of Newcastle*, 1897, 2 Ch. 144; 66 L. J. Ch. 543; *Re Lehmann and Walker*, 1906, 2 Ch. 640; 75 L. J. Ch. 768.

(r) A mortgagee or trustee may safely give an acknowledgment of the right to production and delivery of copies, as it only binds him to produce while he has possession: Conv. Act, 1881, s. 9 (2); and to this he cannot reasonably object.

Production of  
documents in  
mortgagee's  
custody.

A mortgagor, in whom the equity of redemption is still vested, and whose mortgage was made after 1881, is entitled to production: Conv. Act, 1881,

Purchaser who gives highest price (s).

Purchaser whose purchase-money is largest, or in case of equality the Purchaser of the Lot first sold, shall be entitled to the custody of such documents in the possession of the Vendor as relate to any other Lot as well as the Lot or Lots purchased by that Purchaser [and do not relate to any other property besides that comprised in this sale and retained by the Vendor], but in respect of documents delivered to him which relate to the Lot or Lots of any other Purchaser he shall give to that other Purchaser, if he so require (t), a statutory acknowledgment of his right to production and to delivery of copies thereof, and also a statutory undertaking for safe custody thereof. If any Lot be not sold the Vendor may until sale thereof retain all documents relating thereto, and in respect thereof or of any other documents retained he will give to any Purchaser who may so require the before-mentioned statutory acknowledgment and [or but not the] undertaking, and every acknowledgment or undertaking given under this condition shall be prepared and approved on behalf of all parties thereto at the expense of the person to whom it is given.

When some documents relate to other property and some to different Lots.

144. DOCUMENTS of title relating to other property retained by the Vendor as well as to property comprised in this sale will be retained by the Vendor. Documents of title relating to several Lots sold at this sale to different Purchasers and to no other property will, after the sales of all such Lots have been completed, be delivered to the Purchaser whose purchase-money is the largest, or in case of equality to the Purchaser of the Lot first sold, and will in the meantime be retained by the Vendor.

s. 16; and so are the persons deriving title under him: s. 2 (vi.). As between mortgagor and mortgagee, the latter is liable in case of the loss or destruction of the documents while in his possession or under his control: *Hornby v. Matcham* (1848), 16 Sim. 325; 17 L. J. Ch. 471; *Brown v. Sewell* (1853), 11 Hare, 49; 22 L. J. Ch. 1063; see also *James v. Rumsey* (1879), 11 Ch. D. 398; 48 L. J. Ch. 345, where the mortgagor was held entitled to an indemnity, but not to compensation; and see Dart, 7th ed., 490, and cf. *Gilligan v. National Bank*, 1901, 2 Ir. R. 513.

Rights of purchasers *inter se* to documents.

(s) In the absence of any condition the purchaser of the lot which is sold for the highest price is entitled to the custody of the documents: *Griffiths v. Hatchard* (1854), 1 K. & J. 17; 23 L. J. Ch. 957. Where the conditions prescribe that the purchaser of the "largest lot" shall have the deeds, the purchaser of the largest individual lot, and not of several aggregate lots, is entitled to them: *Griffiths v. Hatchard*, *sup.*; *Scott v. Jackman* (1855), 21 Beav. 110.

(t) This will not be required if the vendor gives the acknowledgment and undertaking before parting with the documents.

The Vendor will, as to all documents retained by him, give to every Purchaser of property to which the same relate a statutory acknowledgment of his right to production and to delivery of copies thereof, and also [*or if the Vendor is a mortgagee or trustee say but no*] a statutory undertaking for safe custody thereof (*u*).

145. DOCUMENTS of title which relate not only to the property now offered for sale, but also to other property retained by the Vendor, will be delivered to the Purchaser, and he shall give to the Vendor an acknowledgment of his right to production and delivery of copies thereof, and an undertaking for their safe custody, such acknowledgment and undertaking to be prepared by and at the expense of the Vendor, but to be perused and executed by the Purchaser at his own expense.

Deeds to be delivered to Purchaser, who is to give statutory acknowledgment, &c., to Vendor (*x*).

146. THE documents relating to Lots — to — inclusive, some of which include all or several of these Lots, are now in the hands of the Mortgagees (*y*), and shall not be required by any Purchaser of these Lots to be produced until the Mortgagees are satisfied (*z*), and if any Purchaser of any such Lots requires his abstract to be verified he shall be bound himself at his own cost to obtain production of any documents in the possession of the Mortgagees, and if he cannot obtain such production shall accept such verification (if any) of the abstract as the Vendor is able to furnish, and shall bear all expenses incurred in obtaining or consequent on production of such documents.

Production of documents in the hands of Mortgagees before 1882.

147. DOCUMENTS of title in the custody of a Mortgagee in regard to which the Vendor has a right to require production shall be produced at the expense of the Vendor (*a*).

Cost of production of documents thrown on Vendor.

148. THE [*or* Some of the] documents of title are in the

As to deeds to be retained

(*u*) See last note.

(*x*) This condition is sometimes adopted where the property retained by the vendor is very small, *e.g.*, a strip of land near a road. It should not be used by a vendor who is a trustee.

(*y*) Where the mortgages are subsequent to the commencement of the Conv. Act, 1881, and come within s. 16 of that Act, this condition is unnecessary, for the mortgagor, and any person deriving title under him (s. 2 (vi.)), is entitled to production (s. 16), and the expense falls on the purchaser (s. 3 (6)).

Cost of production of mortgage made after 1881.

(*z*) This can be satisfied under Conv. Act, 1881, s. 5.

(*a*) See Conv. Act, 1881, s. 3 (6); Wolst. Conv. Acts, 9th ed., 25. This condition is used in some forms adopted by Incorporated Law Societies, and is frequently used in private contracts. The Vendor has a right to production under Conv. Act, 1881, s. 16.

by a Mortgagee where mortgagor is Vendor (*b*).

Documents not in Vendor's possession.

Where documents subsequent to commencement of title cannot be produced recital to be evidence.

Plain copy of lost deed to be sufficient.

Production of attested copy of any deed not in Vendor's possession to be sufficient.

Lost deeds.

Vendor's liability to produce documents.

custody of a Mortgagee, and will remain in his custody after the completion of this purchase, as relating also to other property. The Mortgagee will join in the conveyance and give to the Purchaser a statutory acknowledgment of his right to production and delivery of copies of the documents, but the Purchaser shall not require a covenant or undertaking for their safe custody either from him or from the Vendor.

149. THE Vendor shall not be required to procure the production, or trace or state who has the custody of any document not in his possession, or to furnish any abstract or copy thereof, or to give any information relating thereto not within his knowledge (*c*).

150. IF any document, dated — years or upwards before the day of sale, be not in the Vendor's possession, and the possessor thereof is either unknown or refuses production, the recital of that document contained in any deed [dated — years or upwards before the day of sale] shall be taken as conclusive evidence of the material contents and due execution thereof, and no abstract or further evidence, whether by production of the original or otherwise, shall be required of the contents of that document.

151. INASMUCH as a deed dated the — day of —, being a conveyance of Lot — to the Vendor [*or being, &c., describe the nature of the deed*], has been lost, the Purchaser shall be satisfied with the production of a document purporting to be a plain copy thereof, and shall assume that the said deed was duly executed by all the parties thereto (*d*).

152. THE Purchaser shall not require the production, nor make any objection on the ground of the non-production, of any document not in the Vendor's possession of which the Vendor shall produce an attested copy (*e*).

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(*b*) See *Re Willett and Argenti* (1889), W. N. 66; 60 L. T. 735.

(*c*) Where documents are in the hands of mortgagees, see Form No. 146. As to secondary evidence of a lost deed, see *Re Halifax, &c. Co. and Wood* (1898), 79 L. T. 183. The loss does not release the purchaser from the contract if proper secondary evidence is furnished: see S. C. on appeal, *ib.* 556.

(*d*) In the absence of a condition, see *Dissertation*, p. 66, *sup.*

(*e*) Apart from condition, the vendor is bound to produce the originals of all deeds, steward's copies of court rolls, and other instruments necessary to verify the abstract, except documents which are of record or have been lost or destroyed: *Dart*, 7th ed., 153, 349, 364.

153. THE Vendor shall not be required to procure or pay any costs of procuring delivery to the Purchaser of any documents not in the possession of the Vendor (*f*). Delivery of documents not in Vendor's possession.

## SECTION VII.

*As to Compensation and Miscellaneous Matters.*

154. THE property is [Several Lots are] believed to be and shall be taken as correctly described, and any incorrect statement, error, or omission found in the particulars or conditions shall not annul the sale, nor entitle the [any] Purchaser to be discharged from his purchase, nor shall the Vendor or [any] Purchaser claim or be allowed any compensation in respect thereof (*g*). Errors in description (no compensation).

155. MEASUREMENTS and quantities of land shall be deemed correct, and shall not be the subject of compensation if incorrect (*h*). In other respects any incorrect statement, or any error or omission (*i*) which may be discovered in the particulars sale plan or conditions of sale affecting the nature or value of the Errors in description (compensation) (*ii*).

(*f*) S. 3 (6) of the Conv. Act, 1881, does not affect the right of the purchaser to have the title deeds handed over on completion at the vendor's expense: *Re Duthy and Jesson*, 1898, 1 Ch. 419; 67 L. J. Ch. 218. Handing over deeds on completion.

(*g*) Without this condition the vendor, where the error is considerable cannot insist on specific performance, while the purchaser can, however small the error, insist on the vendor giving him as much as he contracted to sell with compensation for what the vendor is unable to convey. Where the error is inconsiderable, the vendor can enforce the contract on paying compensation for the deficiency: Dart, 7th ed., 680. It would seem that this condition, while it applies to great and small errors, so as to exclude the purchaser's right to specific performance with compensation in every case, yet does not enable a vendor to force upon a purchaser a property which he has substantially misdescribed: Dart, 7th ed., 681; *Jacobs v. Rivell*, 1900, 2 Ch. 858; 69 L. J. Ch. 879; Dissertation, pp. 47—48. No compensation; effect of condition as regards specific performance

(*h*) See last note.

(*i*) Omission means an omission which affects the value of the property. An accidental omission to disclose a notice to pave, &c., the work not having been done, is not such an omission: *Re Leyland and Taylor*, 1900, 2 Ch. 625; 69 L. J. Ch. 764. Omission.

(*ii*) The condition does not apply to a defect of title: *Debenham v. Sawbridge*, 1901, 2 Ch. 98; 70 L. J. Ch. 525; cf. *Greenhalgh v. Brindley*, 1901, 2 Ch. 324; 70 L. J. Ch. 740. As to how far the condition can be relied on to cover a material misdescription, see *Denny v. Hancock* (1870), L. R. 6 Ch. 1; 40 L. J. Ch. 193; *Brewer v. Brown* (1884), 28 Ch. D. 309; 54 L. J. Ch. 605; *Re Arnold* (1880), 14 Ch. D. 270 (where the condition was not enforced); and Misdescription.

property [any Lot], shall not annul the sale, but if pointed out before completion (j) the Vendor or the Purchaser, as the case may require, shall pay or allow compensation on account thereof, and the amount in case of dispute shall be settled by the arbitration of two referees, one to be appointed by the Vendor, and the other by the Purchaser, and their umpire, in accordance with the provisions of the Arbitration Act, 1889.

156. MEASUREMENTS and quantities shall be deemed correct, and shall not be the subject of compensation if incorrect. Outgoings stated as estimated shall not be taken as correctly stated, and a Purchaser shall be taken as purchasing subject to the

Errors in  
estimated  
outgoings.

*Re Fawcett and Holmes* (1889), 42 Ch. D. 150; 58 L. J. Ch. 763; *Re Brewer and Hankins* (1899), 80 L. T. 127 (where the condition was enforced); *Re Puckett and Smith*, 1902, 2 Ch. 258; 71 L. J. Ch. 666 (distinguishing *Re Brewer and Hankins*, *sup.*). Where a serious misdescription is verbally corrected by the auctioneer, a purchaser who does not hear him is not entitled to specific performance with compensation: *Re Hare and O'More*, 1901, 1 Ch. 93; 70 L. J. Ch. 45.

Misrepresentation.

The condition does not apply where there is a misrepresentation: *Dimmock v. Hallett* (1866), L. R. 2 Ch. 21; 36 L. J. Ch. 146 (followed in *Whittemore v. W.* (1869), L. R. 8 Eq. 603; 38 L. J. Ch. 17).

There is no general rule that actual fraud is necessary to induce the Court to rescind the contract: *Torrance v. Bolton* (1872), L. R. 8 Ch. 118; 42 L. J. Ch. 177; *Dougherty v. Oates* (1900), 45 Sol. J. 119.

Offer by trustees, &c., of compensation for misdescription.

This condition, when used by trustees or mortgagees, cannot be enforced against them to the injury of the beneficial owners where the misdescription arises from negligence: *White v. Cuddon* (1842), 8 Cl. & Fin. 766, 787. But its use is not depreciatory: *Hobson v. Bell* (1839), 2 Beav. 17, 24; 8 L. J. Ch. 241; and appears to be recognised in a proper case: see *per* the L.J.J. in *Dunn v. Flood* (1885), 28 Ch. D. 586; 54 L. J. Ch. 370.

Measure of compensation.

As to the measure of compensation, see *Re Chiffertel* (1888), 40 Ch. D. 45; 58 L. J. Ch. 263; *Tomlin v. Luce* (1889), 43 Ch. D. 191; 59 L. J. Ch. 164.

Open contract.

The jurisdiction to enforce specific performance, with compensation for defects, on a vendor in the case of an open contract arises from the doctrine that the vendor is estopped from saying that he has not the entirety after he has agreed to sell it: *Rudd v. Lascelles*, 1900, 1 Ch. 815; 69 L. J. Ch. 396.

Compensation after conveyance.

(j) When this condition is used, it is important to provide that the error be pointed out before completion, otherwise compensation may be allowed after conveyance: see *Palmer v. Johnson* (1884), 13 Q. B. D. 351; 53 L. J. Q. B. 348; but in the absence of any condition compensation will not be allowed after conveyance: *Allen v. Richardson* (1879), 13 Ch. D. 524; 49 L. J. Ch. 137 (which is not overruled by *Palmer v. Johnson*, *sup.*: see *Clayton v. Leech* (1889), 41 Ch. D. 103); *Jolliffe v. Baker* (1883), 11 Q. B. D. 255; 52 L. J. Q. B. 609; *Saunders v. Cockrill* (1902), 87 L. T. 30; *Greswolde-Williams v. Burnaby* (1901), 83 L. T. 708; but *cf.* *De Lassalle v. Guildford*, 1901, 2 K. B. 215; 70 L. J. K. B. 533.

actual outgoings, whatever the amount may be. Where an outgoing is not specified as estimated, an error which does not exceed £1 per annum shall not be the subject of compensation, but for an error greater than £1 per annum a compensation shall be allowed to Vendor or Purchaser, as the case may be, and the amount of compensation shall be settled by the auctioneers. In other respects any incorrect statement [*continue as in last condition*].

157. No objection or requisition shall be made by reason of any discrepancy between the old and present measurements [of any Lot].

As to discrepancy in measurements.

158. THE [Each] Purchaser shall pay to the Vendor the proportionate part, as from the date of the contract, [when the Master's certificate becomes binding (*k*)], of the premium on any subsisting policy of fire insurance, and shall be entitled so far as the policy or consent by the office permits to the benefit of such insurance as from the date of the contract [aforesaid (*k*)], but the Vendor shall not be bound to keep on foot any such insurance, nor to give to the [any] Purchaser notice of any premium being or becoming due (*l*).

Benefit of fire insurance.

159. THE Vendor and all other necessary parties (if any) shall, if required by the Purchaser, at any time after the sale execute caveats in favour of the Purchaser for the registry in the — Riding Registry of Deeds under the Yorkshire Registries Acts of 1884 and 1885, to be in force until the expiration of one calendar month from the day fixed for completion of the purchase, such caveats to be prepared and registered by and at the expense of the Purchaser, but to be perused and executed by the grantors thereof at the expense of the Vendor (*m*).

Caveats to be entered under Yorkshire Registries Acts.

159A. (1) THE conveyance to the [each] Purchaser shall be prepared by him and at his own expense, and the engrossment thereof shall be delivered at the office of the solicitors of the Vendor at least — days before the date fixed for completion for execution by the Vendor and other necessary parties (if any), and the draft of such conveyance for perusal and approval on behalf of the Vendor and other necessary parties (if any) shall be left at the said office at least seven days before delivery of the engrossment.

Preparation of conveyance and provision for Purchaser to repay amount paid by Vendor in respect of increment value [or reversion] duty (*n*).

(*k*) These words will only be used on a sale by the Court.

(*l*) See Dissertation, p. 58, *sup*.

(*m*) See Dissertation, p. 74—77, *sup*.

(*n*) See Fin. (1909-10) Act, 1910, s. 3 (6). The vendor must pay the duty. This Form makes the purchaser repay to the vendor, who is liable for the duty under s. 4 (1), the amount paid in respect of the duty.

(2) The conveyance shall, after completion, be produced and handed over to the Vendor or his solicitor, when required by him or them, to enable the same to be stamped to show that all increment value duty (if any) has been paid, or that no such duty is payable in accordance with section four, sub-section (3), of the Finance (1909-10) Act, 1910.

(3) The Purchaser shall, in addition to paying the cost of the ordinary stamp duty on the conveyance, repay to the Vendor the amount (if any) of increment value duty [and reversion duty, if any (*nn*)], and the costs of and incidental to the assessment and payment of the same, or to ascertaining that no such duty is payable, with interest thereon at the rate of £5 per cent. per annum from the date of expenditure.

(4) The Vendor shall be entitled to retain the custody of the conveyance until all such money with interest thereon as aforesaid has been repaid, and in the meantime shall have a lien on the property therefor.

(5) Completion shall not be delayed on account of the non-payment of the said duty, or on account of any delay in ascertaining whether any such duty is payable.

(6) The provisions of this clause shall be enforceable after completion, notwithstanding that the conveyance may have been delivered to the Purchaser, but in that case a memorandum of the charge in favour of the Vendor shall be indorsed on the conveyance.

(7) A Purchaser shall produce to the Commissioners free of expense any documents which may be required in connexion with the assessment of the said duty [and in the case of the purchase of a reversion shall either show that he is not the lessee, or if he is the lessee covenant to indemnify the Vendor against any reversion duty, or allow the conveyance to be taken in such a form as will prevent the merger of the lease].

## SECTION VIII.

### SALES BY THE COURT (*o*).

Payment into  
Court under  
Reversion  
duty.

160. The Vendor will, at the cost of any Purchaser requiring

(*nn*) On a sale of a reversion to a lessee it seems that no benefit accrues to the lessor by the determination of the lease, but if any duty is claimed it seems proper for the purchaser to indemnify the vendor.

(*o*) Many of the foregoing Forms may be required also on sales by the Court: see *Proc. II.*, General Conditions, p. 220, *inf.*

it, apply to the Court in the said action for an order under section five (*p*) of the Conveyancing and Law of Property Act, 1881, as respects any incumbrance which may not be bound by the order for sale to enable the property affected by any such incumbrance to be conveyed or vested in any Purchaser freed from any such incumbrance; and a Purchaser shall not be entitled to require any such incumbrance to be discharged otherwise than under the provisions of the said section, nor make any objection on account of the non-production or delivery of any documents retained in the custody of the persons interested in any such incumbrance, nor require any covenant, acknowledgment or undertaking in respect of the same.

161. EACH Purchaser shall, notwithstanding incumbrances, pay the whole of his purchase-money into Court, as provided by these conditions, to form a common fund to be applied under the direction of the Court in payment of any existing incumbrances, and shall not, after having accepted the title, object [to the setting apart (out of the common fund) of money to answer the claim of incumbrancers having priority over the interests of the parties to the action, and not consenting to the sale, nor (*q*)] to payment out of the [balance of the] common fund of the amount due to any incumbrancer consenting to the sale, or otherwise bound by the order for sale.

162. THE abstracts of title shall commence as follows, namely: As to Lot 1, with a Conveyance dated in the year —; as to Lot 2, with a Conveyance dated in the year —; and as to Lot 3, with a Conveyance dated in the year —, each such Conveyance

(*p*) This s. applies to ordinary sales as well as to sales under the Court: *cf.* Form No. 169, which will be used in place of Form No. 160 where it is ascertained that an application under s. 5 must be made. It enables the vendor to make title free from incumbrances in cases where the concurrence of the incumbrancers cannot be obtained, *e.g.*, where there are infants entitled to portions not yet raisable, and the sale cannot be effected under the S. L. Acts. Under the direction of the Court a sufficient part of the purchase-money is paid into Court to cover the incumbrances and costs, and the Court then declares the land to be free from incumbrances and makes such order for conveyance or vesting as it thinks fit: *Wolst. Conv. Acts*, 9th ed., 29, 30.

(*q*) The words in square brackets should be omitted where there are no prior incumbrancers whose claims are to be satisfied by setting apart a fund under *Conv. Act*, 1881, s. 5. Where there are such prior incumbrancers, the funds for them must be set apart first, otherwise there might not be sufficient to pay them, and the purchasers could not get their conveyances. It will be

s. 5 of *Conv. Act*, 1881, for discharge of incumbrances (where there is an order for sale).

As to application of money in discharge of incumbrances.

Sale in administration action; commencement of title.

Operation of *Conv. Act*, 1881, s. 5.

being on a sale to the testator whose property is being administered in the action (*r*).

Sale in partition action; commencement of title.

163. THE whole of the Lots are vested in trustees in trust for the beneficiaries under a will, and the Master's certificate (in the action which is an action for partition) states what persons are interested and in what shares, and that they are all parties to or bound by the proceedings in the action. The conveyances to Purchasers will be made by the trustees [and the abstract to be furnished to Purchasers will not include any documents or evidence relating to the equitable interests of the beneficiaries, such interests being bound by the order for sale made by the Court (*s*)].

Where abstract does not show equitable interests.

164. THE abstract to be delivered to a Purchaser will not include any documents or evidence relating to equitable interests shown on the Master's certificate of persons whose concurrence in conveying is not necessary, but an abstract of such documents and evidence will be furnished to any Purchaser who, within seven days after the certificate of the result of the sale has become binding, sends to the solicitors of the Vendor[s] a request for it in writing and pays them the cost of copying.

Certificates, proofs in proceedings, &c., to be evidence (*n*).

165. ALL facts or matters appearing to be proved or to be certified by the Master (*t*), or to be stated in any judgment or order in the action [proceedings] in which this sale is made shall be deemed thereby sufficiently and conclusively evidenced, and the [a] Purchaser shall assume that all necessary and proper consents preliminary to a sale have been obtained, and shall not require the concurrence in his conveyance of any person beneficially interested whose interest is merely an equitable interest (*r*).

for the purchasers to see that there is a sufficient fund set apart under s. 5 to answer prior incumbrancers. If there is not, the sale of all the lots must fail, and the order for sale must be contingent on this.

(*r*) For other forms for commencement of title, see Forms, *sup.*, under the heading "As to the Commencement of Title, &c."

(*s*) In many cases the abstracts show the beneficial interests, and then the purchaser can see that the equities are bound.

(*t*) Where the sale is made under an order of a Judge of the County Courts, say "Registrar" instead of "Master."

(*u*) Office copies (see O. 61, r. 7) of all documents filed in the High Court are admitted as evidence: R. S. C., O. 37, r. 4.

(*v*) It may be as well to insert these words as to consent, and as to the concurrence of persons beneficially interested, though they scarcely seem necessary now, having regard to Conv. Act, 1881, s. 70; see also p. 468, *inf.* Complete title is obtained by a conveyance of the legal estate and a good discharge for the purchase-money, which is obtained by

166. WHERE a Lot is sold subject to or with a reservation of any right, effect shall (in case of difference) be given thereto in such manner and at the expense of such persons as the Judge may direct (*y*). Reservations, how to be provided for.

167. THE property is subject to a mortgage for securing payment of the sum of £—— and interest thereon, and after the sale notice will be given to the Mortgagee of intention to pay off the mortgage debt. Notwithstanding the mortgage the Purchaser shall pay the whole purchase-money into Court as provided by these conditions, and shall not, after having accepted the title, object to payment out of the money in Court of the amount due under the mortgage, nor require the conveyance to him to be completed until the mortgage debt has been paid, unless the Mortgagee is willing at any earlier time to concur in the conveyance, and all principal money and interest secured by the mortgage shall be paid out of the fund in Court (*z*). Sale subject to mortgage which cannot be immediately paid.

168. IF it should appear that any death or increment value (*a*) duties are unpaid, the Purchasers shall not require the same to be discharged, but such provision shall be made for payment thereof, either by adding to the account the words “subject to duty” or by setting aside a portion of the proceeds of sale, or otherwise as the Judge may direct, and the Purchasers shall be satisfied with the indemnity thereby afforded, and shall not make any objection or requisition on account of any such duty being unpaid. Provision for death duties.

169. A SUM is required to be set aside under section five of the Conveyancing and Law of Property Act, 1881, so as to enable the property [Lots — & —] to be sold discharged As to setting apart money under s. 5 of Conv. Act (*b*).

payment into Court, and all equities are bound. But it often happens that a purchaser asks for the concurrence in the conveyance of persons having equitable interests, and it is convenient to be able to point to a condition expressly excluding his right to require their concurrence.

An order of the Court does not bind any estate or interest which it was not the intention of the Court to bind; s. 70 makes no difference in this respect. Hence, if the order is for sale of property supposed to belong to A., but which really belongs to B., who is not a party, B. is not affected by the order: *Jones v. Barnett*, 1899, 1 Ch. 611; 1900, 1 Ch. 370; 68 L. J. Ch. 244; 69 *ib.* 242.

(*y*) The order of the judge settling the form of conveyance is subject to appeal: *Pollock v. Rabbits* (1882), 21 Ch. D. 466.

(*z*) Title cannot properly be made till the legal estate is got in, for it can be of little or no use for the purchaser to obtain a conveyance of an equitable interest.

(*a*) Increment value duty attaching on death is a charge: Fin. (1909-10) Act, 1910, s. 5.

(*b*) See also Form No. 160.

from certain incumbrances, and the [a] Purchaser, having accepted the title and ascertained that the fund in Court will be more than sufficient to discharge all such incumbrances, shall not object to the setting apart in Court and carrying over to a proper account of the required amount, though his conveyance may not have been executed, nor on account of the non-production or delivery of any documents retained in the custody of the persons interested in any such incumbrances or require any covenant, acknowledgment or undertaking in respect of the same.

As to covenant  
by person  
appointed to  
convey.

170. The conveyance to the [each] Purchaser shall be made either by a vesting order or by a person appointed for the purpose by the Court, who shall be required to give only the statutory covenant implied by reason of his being expressed to convey under the order of the Court [and any vesting or other order required to enable a conveyance shall be obtained by the [each] Purchaser at his own expense (c)].

Production of  
documents in  
hands of Mort-  
gagees.

171. THE documents relating to Lots — are in the hands of Mortgagees, and production thereof shall not be required until the Mortgagees are satisfied (d). If a Purchaser of any of these Lots requires his abstract to be verified, he shall himself at his own cost obtain production of documents in the possession of any Mortgagee, and if he cannot obtain such production, shall accept such verification (if any) of the abstract as the Vendor is able to furnish, and shall bear all expenses incurred in obtaining or consequent on production of such documents.

Where trus-  
tees, persons  
appointed, or  
tenants for  
life convey.

172. THE persons who will convey (being trustees or persons appointed for the purpose by the Court or tenants for life conveying under the Settled Land Acts) are not as regards any trustee or person appointed by the Court to be required to give any covenant except the statutory covenant implied by reason of their being expressed to convey as trustees or under the order of the Court, and as regards tenants for life their covenants are to be limited in the usual way to the acts and defaults of themselves and their heirs and persons deriving title under them.

Special con-  
ditions under  
L. T. Acts.

*For special conditions relating to land which comes within the provisions of the Land Transfer Acts, 1875 and 1897, see separate Division of this Vol., inf.*

(c) Where there are several lots it will be best for the vendor to obtain one order applicable to all the lots.

(d) See note to Form No. 146, *sup.*

## PART II.

PRECEDENTS OF CONDITIONS OF SALE BY  
AUCTION (a).

## No. I.

CONDITIONS of SALE applicable to FREEHOLDS, COPYHOLDS,  
and LEASEHOLDS. VARIATIONS where the property is sold  
in LOTS.

1. THE highest bidder shall be the Purchaser, the Vendor[s] Highest bidder.  
fixing a reserve price [for each Lot] and reserving the right to Reserve price.  
bid up to such price by himself [themselves] or his [their]  
agent (b) [and also the right to withdraw, consolidate and  
rearrange Lots].

(a) Conditions of sale must necessarily vary according to the state of the Preparation of conditions of sale.  
title to the property and having regard to the particular circumstances of  
each case. Hence, in preparing the precedents in this and the next Part  
it has been thought advisable to set out such of the conditions as are  
applicable to practically every case, and by reference to the preceding groups  
of Forms to suggest to the draftsman the additional provisions he may  
require.

It is convenient to have some rule as to the order of conditions of sale, Order of conditions of sale.  
and the following is suggested as agreeing with the order in which the  
transactions take place :—

- (1) As to the auction, deposit, taking possession, and valuations.
- (2) As to the commencement of title and the contents of the abstract
- (3) Matters arising on the abstract.
- (4) Identity and other matters arising on the particulars.
- (5) The conveyance and its contents.
- (6) Documents.
- (7) Compensation and miscellaneous matters.
- (8) Re-sale on default.

The Forms will be found arranged under these headings (except the  
last) and in this order.

(b) The Sale of Land by Auction Act, 1867, provides that the particulars Sale of land by Auction Act, 1867.  
or conditions of sale by auction of land shall state whether it will be sold  
without reserve or subject to a reserve price, or whether a right to bid  
is reserved, and that if it is stated that the land will be sold without reserve  
or to that effect, it shall not be lawful for the seller to employ any person to

Advance on  
bidding and  
retracting.

2. No person shall advance less than £—[the sum to be fixed by the auctioneer] on each bidding, or retract a bidding; and if any dispute arise, the property [Lot in dispute] shall be put up again at the last undisputed bidding, or the auctioneer may determine the dispute.

[Add here conditions as to additional payments to be made by the Purchaser for timber, fixtures, &c., see Forms under Sect. I., "As to the Auction, &c." If incumbrances are to be discharged by payment into Court then take Form No. 2 in place of the next general condition].

Deposit.

3. THE [Each] Purchaser shall at the close of the sale to him pay down a deposit (c) of £— per cent. on the amount of his purchase-money, and sign an agreement in the form subjoined

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bid, or for the auctioneer to take knowingly any bidding from such person; and that when any such sale is declared to be subject to a right for the seller to bid, the seller, or any one person on his behalf, may bid at the auction in such manner as he may think proper. A statement that the sale is subject to a reserve price does not enable the vendor to employ a bidder; the latter right must be expressly reserved also: *Gilliatt v. G.* (1870), L. R. 9 Eq. 60; 39 L. J. Ch. 142; Dart, 7th ed., 121, 137, 210.

Where  
auctioneer  
knocks down  
property at  
less than re-  
serve price.

At a sale by auction, where the fact that there is a reserve is known, and the auctioneer knocks down the property to the highest bidder, who has bid less than the reserve, the bidder has no right of action against the auctioneer, either for breach of duty in refusing to sign a memorandum or otherwise complete the contract, or for breach of warranty of authority to accept the bid: *McManus v. Fortescue*, 1907, 2 K. B. 1; 76 L. J. K. B. 393.

Payment of  
deposit.

(c) The acceptance of a cheque for the deposit in lieu of cash is usual, and not unreasonable, even where the vendor is a mortgagee exercising his power of sale: *Farrer v. Lacy & Co.* (1885), 31 Ch. D. 42; 55 L. J. Ch. 149. But a vendor is not bound to accept a cheque: *Johnston v. Boyes*, 1899, 2 Ch. 73; 68 L. J. Ch. 425; Dart, 7th ed., 137.

Stakeholders.

Where the deposit is paid to the auctioneer without any special agreement, he holds it as stakeholder, and is entitled to the interest earned: *Harington v. Hoggart* (1830), 1 B. & Ad. 577; 9 L. J. (O.S.) K. B. 14; and see *Lee v. Munn* (1817), 8 Taunt. 45; 1 Moore, C. P. 481; Dart, 7th ed., 203. If this is not desired, it should be expressed to be paid to the auctioneer or vendor's solicitor "as agent for the vendor": *Edgell v. Day* (1865), L. R. 1 C. P. 80; 35 L. J. C. P. 7; *Ellis v. Goulton*, 1893, 1 Q. B. 350; 62 L. J. Q. B. 232; Dart, 7th ed., 215; and article in 52 Sol. J. 256. Where the vendor is in a fiduciary position the deposit should not be paid to stakeholders.

Where tenant  
for life selling  
under the  
S. L. Acts.

If the sale is by a tenant for life under the S. L. Acts, 1882 to 1890, and the trustees are willing that the vendor's solicitors or auctioneers shall receive the deposit, the words "as Agents for the Settled Land Act Trustees" should be

to these conditions for the completion of his purchase according to these conditions, and 'pay the balance of his purchase-money on the — day of — next (*d*) at the office, No. — Street in —, of Messrs. —, the solicitors of the Vendor[s], at which time and place the purchase[s] shall be completed; and the [a] Purchaser paying his purchase-money shall as from that day be let into possession or receipt of rents and profits and pay all outgoings (*e*), and up to that day all rent, rates, taxes, and other outgoings (*f*) shall (if necessary) be apportioned, and the balance shall be paid by or allowed to the Purchaser on completion, and

Completion.

Possession.

substituted for "the Vendor's solicitors" The trustees should require the solicitors to pay the money at once into the trustees' account.

Where the sale is made with the concurrence of mortgagees who are willing that the deposit should be paid to the mortgagors' solicitor, they should appoint such solicitor their agent for that purpose.

Where mortgagees concur.

The purchaser has a lien on the property for his deposit, if the contract is determined otherwise than by the purchaser's wilful default: *Whitbread v. Watt*, 1902, 1 Ch. 835; 71 L. J. Ch. 424. See also *Ridout v. Fowler*, 1904, 2 Ch. 93; 73 L. J. Ch. 579.

Purchaser's lien where contract determined otherwise than by his default.

(*d*) *I.e.*, next after the day of sale: *Daves v. Charsley* (1886), W. N. 37, 78.

(*e*) The term "outgoings" includes all liabilities incurred in respect of the property before the day fixed for completion, for drainage, paving, or other works; see *Nidgley v. Coppock* (1879), 4 Ex. D. 309; 48 L. J. Ex. 674; *Tubbs v. Wynne*, 1897, 1 Q. B. 74; 66 L. J. Q. B. 116; *Barsht v. Tagg*, 1900, 1 Ch. 231; 69 L. J. Ch. 91; Dart, 7th ed., 134, 143; see also note to Form No. 108, which should be used where the purchaser is to repay money expended by the vendor before completion in complying with the requirements of local authorities.

Meaning of "outgoings."

(*f*) The following are instances of wilful default:—Vendor going abroad (*Re Young and Harston* (1886), 31 Ch. D. 168; 54 L. J. Ch. 1144); delay in obtaining concurrence of necessary parties (*Re Helling and Merton*, 1893, 3 Ch. 269; 62 L. J. Ch. 783; *Re Earl of Strafford and Maples*, 1896, 1 Ch. 235; 65 L. J. Ch. 124); delay in obtaining admittance to copyholds (*Re Wilson and Stercus*, 1894, 3 Ch. 546; 63 L. J. Ch. 863); and misinterpretation of the conditions of sale (*Re Pelly and Jacob* (1899), 80 L. T. 45). But misdescription, arising from the vendor's neglect to examine his own title (*Re Mayor of London and Tubbs*, 1894, 2 Ch. 524; 63 L. J. Ch. 580); an unknown defect in the vendor's title (*Re Woods and Lewis*, 1898, 2 Ch. 211; 67 L. J. Ch. 475); an unsuccessful attempt to repudiate the contract (*North v. Percival*, 1898, 2 Ch. 128; 67 L. J. Ch. 321; and see *Re Bayley-Worthington and Cohen*, 1909, 1 Ch. 648; 78 L. J. Ch. 351); and a mistake as to the correct form of conveyance (*Bennett v. Stone*, 1903, 1 Ch. 509; 72 L. J. Ch. 240), have been held not to amount to wilful default. The omission of the words "wilful default" makes no difference: *North v. Percival*, *sup.*; and see generally Dart, 7th ed., 664, 665.

Wilful default.

Interest in  
case of delay.

if from any cause whatever, other than wilful default (*g*) on the part of the Vendor[s], the completion of the [any] purchase is delayed beyond the before-mentioned day, the balance of the purchase-money shall bear interest at the rate of £4 per cent. per annum from that day to the day of actual payment thereof (*h*).

Time for  
delivery of  
requisitions,

4. THE [Each] Purchaser shall within — days after the delivery of his abstract (*i*) send to the solicitors of the Vendor[s] a statement in writing of all the objections and requisitions (if any) to or on the title or evidence of title, or the abstract or the particulars or these conditions, and subject thereto the title shall be deemed accepted, and all objections and requisitions not included in any statement sent within the time aforesaid shall be deemed waived, and an abstract, though in fact imperfect, shall be deemed perfect, except for the purpose of any further objections or requisitions which could not be taken or made on the information therein contained (*j*), and an answer to any

and replies to  
answers.

(*g*) See last note.

Delay in  
completion.

(*h*) Where there is delay in completion not caused by the wilful default of the vendor, the purchaser cannot escape paying interest by depositing the purchase-money in a bank: *Re Riley to Streetfield* (1886), 34 Ch. D. 386; 56 L. J. Ch. 442.

Interest.

On an open contract interest is payable from the time when the purchaser could prudently take possession: *Re Keeble and Stillwell* (1898), 78 L. T. 383; and in an action for specific performance from the date of the Master's certificate: *Halkett v. Earl Dudley*, 1907, 1 Ch. 590; 76 L. J. Ch. 330.

Purchaser's  
right to com-  
pensation for  
deterioration.

As to the purchaser's right to compensation for deterioration, &c., see Dart, 7th ed., 672—673; *Re Wilson and Stevens*, 1894, 3 Ch. 546; 63 L. J. Ch. 863; *Jones v. Gardiner*, 1902, 1 Ch. 191; 71 L. J. Ch. 93.

Delivery of  
abstract.

(*i*) It is not advisable to fix a time for delivery of the abstract, as the vendor must deliver an abstract within a reasonable time or the purchaser may rescind: *Compton v. Bagley*, 1892, 1 Ch. 313; 61 L. J. Ch. 113; but if a time is fixed and the vendor fails to deliver a perfect abstract (see Dart, 7th ed., 138, 317) within the time specified, any condition binding the purchaser to make his objections within a specified time will not be effectual: *Upperton v. Nickolson* (1871), L. R. 6 Ch. 436; 40 L. J. Ch. 401; *Re Todd and McFadden*, 1908, 1 Ir. R. 213; *Oakden v. Pike* (1865), 34 L. J. Ch. 620.

Time for  
objections.

(*j*) In the absence of words to the contrary time begins to run from the delivery of a perfect abstract, but the condition as to time will not be binding on the purchaser where the vendor cannot show a good title: *Went v. Stallibrass* (1873), L. R. 8 Ex. 175; 42 L. J. Ch. 108; nor where the vendor's power to sell is in question: *Re Tanqueray-Willaume and Landau* (1881), 20 Ch. D. 465; 51 L. J. Ch. 434; though it will, where the requisition relates to the subsequent devolution of the title: *Pryce-Jones v. Williams*, 1902, 2 Ch. 517; 71 L. J. Ch. 762; Dart, 7th ed., 174.

objection or requisition shall be replied to in writing within ten days after the delivery thereof, and if not so replied to, shall be considered satisfactory, and time shall be deemed in all respects as of the essence of this condition. If the [any] Purchaser shall take any objection or make any requisition (*k*) which the Vendor[s] shall be unable or on the ground of expense unwilling to remove or comply with, or if any question shall arise as to the conveyance (*l*) and the Purchaser shall not withdraw such objection or requisition or waive the question within seven days after being required so to do, the Vendor[s] may by notice in writing delivered to the [such] Purchaser or his solicitor, and notwithstanding any intermediate negotiation or litigation (*m*), rescind the contract for sale, and the Vendor[s] shall within one week after such notice repay to the Purchaser [whose contract is so rescinded] his deposit money, which shall be accepted by him in satisfaction of all claims on any account whatever, and the Purchaser [whose contract is so rescinded] shall return forthwith all abstracts and papers in his possession belonging to the Vendor[s].

Power to  
rescind (*n*).

5. THE abstract of title [to Lots —] shall commence with an

Commence-  
ment of title.

(*k*) It is unnecessary to repeat the words "to or on the title, &c.": *Re Terry and White* (1886), 32 Ch. D. at p. 24; 55 L. J. Ch. 345.

(*l*) There is no objection to the general practice of extending the power to rescind to matters of conveyance: *Re Deighton and Harris*, 1898, 1 Ch. 458; 67 L. J. Ch. 240; though it has been disapproved in *Hardman v. Child* (1885), 28 Ch. D. 712; 54 L. J. Ch. 695. As to the distinction between requisitions as to title and those as to conveyance, see Dart, 7th ed., 176.

Vendor's  
power to  
rescind.

(*m*) Where these or similar words are used the vendor is unable to rescind after judgment: *Re Arbib and Class*, 1891, 1 Ch. 601; 60 L. J. Ch. 263; *Holliwell v. Seacombe*, 1906, 1 Ch. 426; 75 L. J. Ch. 289; but he may probably do so at any earlier time: *Isaacs v. Towell*, 1898, 2 Ch. at p. 292; 67 L. J. Ch. 508. See generally, as to the vendor's power to rescind, Dart, 7th ed., 175; and as to costs, *ib.* 178, and *Holliwell v. Seacombe*, *sup.*

(*n*) The power of rescission must not be arbitrarily nor unreasonably exercised: *Quinton v. Horne*, 1906, 1 Ch. 596; 75 L. J. Ch. 593; and cannot be exercised at all where the vendor has no title: *Re Deighton and Harris*, *sup.*; nor where he can only show title to a part: *Re Jackson and Haden*, 1906, 1 Ch. 412; 75 L. J. Ch. 226; unless he has made an innocent misrepresentation: *Re Simpson and Moy* (1909), 53 Sol. J. 376. See further as to the exercise of the power, and generally as to when it will be upheld, Dart, 7th ed., 176 *et seq.* A notice to rescind signed without prejudice is void: *Re Weston and Thomas*, 1907, 1 Ch. 244; 76 L. J. Ch. 179.

Rescission.

Indenture dated the —— day of —— 19—, being [a conveyance on sale or a mortgage or a settlement, &c. (o)].

Particular points arising on the Abstract.

6. *Insert here any conditions required for precluding a Purchaser from objecting to the title as shown by the Abstract. Also conditions as to contents of leases, stamps, and registration. See Forms under Sect. III., "Matters arising on the Abstract," sup.*

Identity, &c.

7. *Here will follow conditions relating to identity, land tax, tithe rentcharge, apportionments, restrictive covenants already affecting the land, &c. See Forms under Sect. IV., "As to Identity and other Matters arising on the Particulars," sup.*

Form of conveyance.

8. *See Forms as to the form of the conveyance, restrictive covenants to be imposed, &c., under Sect. V., "As to the Conveyance and its Contents," sup.*

Preparation of conveyance.

9. (1) THE conveyance (p) to the [each] Purchaser shall be prepared by him and at his own expense, and the engrossment thereof shall be delivered at the office of the solicitors of the

Commencement of title.

(o) See the Forms under Sect. II., "As to the Commencement of Title and Contents of the Abstract," where the necessary provisions for cases of leaseholds and copyholds and particular classes of property, &c., will be found. It is generally advisable to state the date when and the nature of the instrument with which the title is to commence: Dart, 7th ed., 329—331.

Copyholds.

(p) In the case of copyholds, unless the sale is under the S. L. Acts or the Lands C. C. Act, or is to be effected by bargain and sale, the expression "deed of covenant to surrender" should in this condition be used in place of the word "conveyance." The latter word is applicable to leaseholds as well as to freeholds, but if preferred "assignment" may be used in the case of leaseholds.

Costs of conveyance, &c.

This condition following the general practice in ordinary cases leaves the vendor to bear the expense of procuring the concurrence of necessary parties, and of perusal and execution by them; and also the cost of matters essential to the validity of the conveyance (see Dart, 7th ed., 714), the principle being that the vendor ought to bear the expense of matters which have to be attended to by the vendor's solicitor. But the purchaser bears the cost of registration (*ib.*).

When it is desired to throw these expenses on the purchaser (see *Re Willett and Argenti* (1889), W. N. 66; *Re Sander and Walford* (1900), 83 L. T. 316), the condition should run as follows:—

Form when all costs thrown on Purchaser.

The conveyance to the [each] Purchaser, and every other assurance, act and thing (if any) required by him for perfecting or completing the Vendor's title, or otherwise, shall be prepared, made, and done by and at the expense of the [such] Purchaser, who shall also bear the expense of perusal on behalf of and execution by all parties except the Vendor[s], and the engross-

Vendor[s] at least — days before the day fixed for completion of the sale for execution by the Vendor[s] and other necessary parties (if any), and the draft of such conveyance for perusal and approval on behalf of the Vendor[s] and other necessary parties (if any) shall be left at the said office at least seven days before delivery of the engrossment [and time shall be of the essence of this condition].

Delivery of draft.

(2) Completion shall not be delayed on account of the non-payment of increment value duty (if any), but the Vendor shall before the date fixed for completion produce the conveyance and all such other documents and information as the Commissioners of Inland Revenue may require to enable them to ascertain whether any duty is payable and to assess the duty (if any), and, if required, furnish security for the payment of the duty, and on completion shall hand over the conveyance with a stamp thereon in accordance with sub-section (3) of section four of the Finance (1909-10) Act, 1910. And after completion the [each] Purchaser shall, if required, produce to the Commissioners, free of cost, any documents which may be handed over to him.

Provisions as to stamping in respect of increment value duty (q).

10. *Insert conditions, if required, as to the retention of documents, production, &c.; see Forms under Sect. VI., "As to Documents," sup.*

Documents.

11. *Add conditions as to compensation or no compensation for errors in description, &c., and as to fire insurance; see Forms under Sect. VII., "As to Compensation and Miscellaneous Matters," sup.*

Compensation, &c.

12. If the [any] Purchaser shall neglect or fail to comply with any of the above conditions, his deposit money shall be

Power to resell on default (r).

ment of every such conveyance and assurance shall be, &c. [continue as above].

It is conceived, however, that such a condition (which would in terms include the costs of (1) a disentailing assurance; (2) the release or reconveyance of any number of mortgages and charges; (3) appointments of trustees for the purpose of the S. L. Acts, and appointments of new trustees, &c., and might involve the purchaser in great and unknown expense) is unfair and depreciatory, and should not be used in ordinary cases.

(q) See Fin. (1909-10) Act, 1910, ss. 3 (6), 4, 13—15. If it is desired to throw the duty on the purchaser, see Form No. 159A, *sup.*, which should be used with or without modification on the sale of a reversion expectant on a lease.

Reversion duty.

(r) Even where there is no such condition as above, the deposit would be forfeited: *Howe v. Smith* (1884), 27 Ch. D. 89; 53 L. J. Ch. 1055; *Cornwall*

Forfeiture of deposit and resale.

forfeited to the Vendor[s], who may with or without notice resell the premises [the Lot or Lots in respect whereof default occurs] without previously tendering a conveyance to the Purchaser [or the defaulter at this sale], and any resale may be made by auction or private contract at such time, subject to such conditions and in such manner generally as the Vendor[s] may think proper; and if thereby the Vendor[s] shall incur a loss by reason of diminution in price or expenses incurred, or both, after taking into account the deposit(s), the Purchaser [or the defaulter at this sale] shall pay to the Vendor[s] the amount of such loss as liquidated damages (t), and on any such resale by auction the property [Lot or Lots offered for sale] may be bought in, and all expenses consequent on an unsuccessful attempt to resell shall be forthwith paid to the Vendor[s] by the defaulter at this sale.

## MEMORANDUM.

Memorandum  
for signature.

BE it remembered that at the sale by auction this — day of —, 19— (u), of the property mentioned in the annexed particulars of sale, — of — was the highest bidder for the

v. *Henson*, 1900, 2 Ch. 298; 69 L. J. Ch. 581 (as to whether the principle applies also to further instalments, see S. C.); and the vendor might recover the expenses of the abortive sale: *Essex v. Daniell* (1875), L. R. 10 C. P. 538; or might resell and claim the difference in price by way of damages: *Noble v. Edwards* (1877), 5 Ch. D. 378; but see 43 Sol. J. 601. The deposit may be forfeited after an order for specific performance, which is not obeyed, has been obtained: *Griffiths v. Pezzy*, 1906, 1 Ch. 796; 75 L. J. Ch. 462; see also *Shuttleworth v. Clews*, 1910, 1 Ch. 176; 79 L. J. Ch. 121. But if the vendor makes default the purchaser can recover the deposit, and other instalments paid, and is entitled to a lien: *Rose v. Watson* (1864), 10 H. L. C. 672; 33 L. J. Ch. 385; *Lery v. Stogdon*, 1899, 1 Ch. 5; 68 L. J. Ch. 19; *Powell v. Marshall & Co.*, 1899, 1 Q. B. 710; 68 L. J. Q. B. 477; *Whitbread & Co., Ltd. v. Watt*, 1902, 1 Ch. 835; 71 L. J. Ch. 424; *Kilton v. Hewitt* (1904), W. N. 21.

(s) See *Ockenden v. Henly* (1858), 4 Jur. N. S. 999; 27 L. J. Q. B. 361.

Liquidated  
damages.

(t) Whether liquidated damages will be enforced or treated as a penalty, see *Wallis v. Smith* (1882), 21 Ch. D. 243; 52 L. J. Ch. 145; *Barton v. Capewell Co.* (1893), 68 L. T. 857; *Clydebank Engineering Co. v. Don Jose Ramos, &c.*, 1905, A. C. 6; 74 L. J. P. C. 1; *Pye v. British Automobile Syndicate*, 1906, 1 K. B. 425; 75 L. J. K. B. 270.

(u) It is important to insert the correct date: *Van Praagh v. Everidge*, 1903, 1 Ch. 434; 72 L. J. Ch. 260.

premises [Lot — ], and was declared the Purchaser thereof, subject to the above conditions, at the price of £—, and has paid the sum of £— by way of deposit, and agrees to pay to — (x), the Vendor[s], according to the above conditions, the balance of the said purchase-money [including the valuation money]; and the Vendor and Purchaser hereby agree to complete the sale in accordance with the above conditions of sale.

|                        |            |
|------------------------|------------|
| Purchase-money,        | £—.        |
| Deposit,               | £—.        |
| [Valuation money, £—.] |            |
| Balance,               | <u>£—.</u> |

As agents for the Vendor[s] we hereby confirm the sale and [as stakeholders or as agents for the Settled Land Act trustees (xx)] acknowledge the receipt of the above deposit.

Abstract of title to be sent to —.

*Memorandum to be signed by Vendor and Purchaser as to any Lot which may not be sold at the auction but is afterwards bought privately.*

MEMORANDUM. C. D., of, &c. (Vendor), hereby agrees to sell, and A. B., of, &c. (Purchaser), hereby agrees to purchase, the property [Lot —], as described in the above particulars, for the sum of £—, of which the sum of £— has been paid by the said A. B. to the said C. D. (or as the case may be) by way of deposit. AND it is hereby agreed that this sale is made subject to the above conditions so far as the same [relate to the said Lot and] are applicable to a sale by private contract (y).

Memorandum where property is sold privately.

(Signed) C. D.  
A. B.

(x) The vendor must be named or otherwise sufficiently described : Dart, 7th ed., 235.

(xx) There must be no stakeholders if the vendor is in a fiduciary position ; Stakeholders, see first note to clause 3 of this Precedent.

As to the auctioneer's commission, see *Skinner v. Andrews* (1910), 54 Sol. J. 360.

Auctioneer's commission.

(y) This memorandum is applicable whether Prec. I. or II. be used, but in the latter case it may sometimes be necessary to make the agreement conditional on the consent of the Court being obtained.

## No. II.

CONDITIONS *on SALE by the Court*(z).

|                        |  |
|------------------------|--|
| Biddings.              | 1. No person is to advance less than £—— at each bidding, [nor retract a bidding] (a).   |
| Reserve.               | 2. THE sale is subject to a reserve bidding [for each Lot] which has been fixed by the Judge to whom this cause is assigned [and the right is reserved to bid up to such reserve price].   |
| Signature and notices. | 3. THE [Each] Purchaser shall at the time of sale subscribe his name and address to his bidding [in the bidding paper], and the abstract of title and all written notices and communications and summonses shall be deemed duly delivered to and served upon the [a] Purchaser by being left for him at such address unless and until he is represented by a solicitor.  |
| Deposit.               | 4. THE [Each] Purchaser shall at the time of sale pay a deposit of £— per cent. on the amount of his purchase-money to ——, the person appointed by the said Judge to receive the same.   |
| Certificate of result. | 5. ONE of the Masters attached to the Chambers of the said Judge will, after the sale, proceed to certify the result, and —— day, the —— day of ——, 19——, at —— of the clock in the —— noon, is appointed as the time at which the Purchaser[s] may, if he [they] think[s] fit attend by his [their] solicitors at the Chambers of the said Judge at the Royal Courts of Justice, London, to settle such certificate. The certificate will then be settled, and will in due course be signed and filed and become binding without any further notice or expense to the Purchaser[s]. |
| Delivery of abstract.  | 6. THE Vendor shall, within [eight] days (b) after such certificate has become binding, deliver to the [each] Purchaser or his solicitor an abstract of the title to the property [Lot or Lots   |

(z) See R. S. C., 1883, O. 51, rr. 1–6 and 6A; *ib.*, O. 55, rr. 34, 75; *ib.*, Appx. L, No. 15 (but the form in the Appx. is in some respects obsolete, and is not now used as it stands). See also generally the notes to last Precedent. If there has been no order for sale then the sale may be made out of Court with the leave of the Court: *Proc. VIII. of Agreements for Sale*, p. 255, *inf.*

(a) The words in large square brackets throughout this Precedent are not given in the official Form.

(b) In sales under the Court a time must be fixed for delivery of the abstract: R. S. C., 1883, O. 51, r. 2.

purchased by him] subject to the stipulations contained in these Requisitions. conditions. And the [each] Purchaser [whether his abstract is delivered within such eight days or not] shall within fourteen (c) days after the actual delivery of his abstract, deliver at the office of —, solicitor, at —, in the County of —, a statement in writing of his objections and requisitions (if any) to or on the title as deduced by such abstract and upon the expiration of such last-mentioned time, and in this respect time shall be deemed of the essence of the contract; the title shall be considered as approved of and accepted by such [the] Purchaser subject only to such objections and requisitions (if any), [and all objections and requisitions not included in any statement sent within the time aforesaid shall be deemed to have been waived, and an abstract, though in fact imperfect, shall be deemed perfect, except for the purpose of any further objections or requisitions which could not be taken or made on the information therein contained, and any answer to any objection or requisition shall be replied to in writing within ten days after the delivery thereof, and if not so replied to shall be considered satisfactory, and time shall be deemed in all respects of the essence of this condition. If the [any] Purchaser shall take any objection or make any requisition which the Vendor[s] is [are] advised not to remove or comply with, or if any question shall arise as to the conveyance, the Vendor[s], with the sanction of the Judge, shall be at liberty, by notice in writing to be delivered to the [such] Purchaser or his solicitor, and notwithstanding any intermediate negotiation, to rescind his contract for sale upon such terms as the Judge shall approve, and the Purchaser [whose contract is so rescinded] shall thereupon be entitled to receive back his deposit, and shall accept the same in discharge of all claims for costs or otherwise, and shall forthwith return all abstracts and papers in his possession belonging to the Vendor[s]].

7. THE [Each] Purchaser shall, under a direction signed by the Master for that purpose to be obtained by him, or in case of his neglect under an order for that purpose to be obtained by the Vendor at the cost of the Purchaser upon application at the Chambers of the said Judge, pay the balance of his purchase- Payment also  
Court.

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(c) "Four" days is the time given in O. 51, r. 2; it is apprehended that this is a mistake for "fourteen."

money (after deducting the amount paid as a deposit) [together with the amount of the valuation (if any) under these conditions (*d*)] into Court to the credit of this cause — v. —, — 19—, No. — [“Proceeds of the sale of —”], on or before the — day of —, 19—, and if [from any cause whatever] the same is not so paid, then the Purchaser [making default] shall pay interest on the balance of his purchase-money, [including the amount of such valuation] at the rate of £— per cent. per annum, from the said — day of —, 19—, to the day on which the same is actually paid [deducting property tax (*e*)], [If the [any] Purchaser makes default in such payment the cost of any application by the Vendor[s] to enforce payment shall be borne by the [such] Purchaser unless the Judge shall otherwise direct]. Upon payment of the balance of his purchase-money [and the amount of such valuation] in manner aforesaid, the [each] Purchaser shall be entitled to possession, or to the rents and profits of the property [Lot or Lots purchased by him], as from the — day of —, 19—, down to which time all outgoings shall be paid by the Vendors [and such rents, profits, and outgoings shall if necessary be apportioned by the Judge at Chambers].

Special conditions.

8. *[Add conditions, if required, as to the commencement of title, particular points arising on the Abstract, identity, the form of conveyance, &c., as in Precedent I., sup., using the Forms under Sect. VIII., “Special Conditions on Sales by the Court,” or the Forms applicable to ordinary sales, which may in some cases require to be adapted].*

Preparation of conveyance, Documents.

9. *Insert clause 9 of last Precedent.*

10. *Insert conditions as to the retention of documents, production, &c.; see Forms under Sect. VI., “As to Documents,” sup., or Form No. 171.*

Valuation.

(*d*) Where the timber or fixtures, &c., are sold at a valuation this condition will be preceded by Form No. 4 (which contains variations for use in sales by the Court), or one of the other Forms under Sect. I., *sup.*, which may require slight alterations.

(*e*) In sales under the Court the conditions usually provide that the purchaser may deduct property tax: Dart, 7th ed., p. 1170 (but see *dictum* of Lindley, L.J., *Gostlings and Sharpe v. Blake* (1889), 23 Q. B. D. at p. 330; 58 L. J. Q. B. 446). See also Dan. Ch. Pract., 7th ed., 889; Dan. Ch. F., 5th ed., 690.

11. If any error or mis-statement shall appear to have been made in the above particulars, such error or mis-statement shall not annul the sale or entitle the [any] Purchaser to be discharged from his purchase but [if pointed out before completion and not otherwise] compensation shall be made to or by the [a] Purchaser as the case may be, and the amount of such compensation shall be settled by the Judge in Chambers [but measurements and quantities shall be deemed correct and shall not be the subject of compensation if incorrect].

Compensation  
for errors.

LASTLY.—If the [any] Purchaser shall not pay his purchase-money at the time above specified or at any other time which may be named in any [direction or] order for that purpose, and in all other respects perform these conditions, [his deposit money shall be forfeited to the Vendor[s], and] an order may be made by the said Judge upon application at Chambers for the resale of the property [Lot or Lots purchased by such Purchaser] and for payment by the Purchaser [him] of the deficiency (if any) in the price which may be obtained upon such resale, and of all costs and expenses occasioned by such default [after giving credit for the deposit].

Resale on  
default.

### No. III.

#### CONDITIONS *on SALE by TENDER under the COURT.*

1. EACH person tendering shall fill up and sign with his name and address the form of tender subjoined to these conditions, and send the same with the foregoing particulars and these conditions remaining attached thereto in a closed cover to Messrs. —, of —, on or before the — day of — next (*f*).

Filling up  
form of tender.

2. ENCLOSED with the tender the person tendering shall send a crossed cheque payable to the order of Messrs. —, for a sum by way of deposit equal to £— per cent. on the amount of his tender.

Cheque for  
deposit.

3. THE Vendors do not bind themselves to accept the highest (*g*) or any tender.

Acceptance of  
tenders.

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(*f*) See notes to Prec. I., *sup*.

(*g*) As to the effect of a tender of £— beyond the amount of any other tender, see *South Helton, &c. Co. v. Haswell, &c. Co.*, 1898, 1 Ch. 465; 67 L. J. Ch. 238.

Notice of  
acceptance.

4. BEFORE the — day of — 19—, notice of acceptance will be given to the person whose tender is accepted, and the cheques or the amounts received under the cheques of other persons whose tenders are not accepted will be returned to them.

Master's  
certificate.

5. THE Master will on — day the — day of —, 19—, at — of the clock in the — noon, proceed to certify the name of the person whose tender is accepted, and such person may, if he thinks fit, attend by himself or his solicitor at the Chambers of the Judge at the Royal Courts of Justice, London, to settle such certificate. The certificate will then be settled and will in due course be signed and filed and become binding without further notice or expense to the Purchaser.

Delivery of  
notices.

6. THE abstract of title and all written notices and communications and summonses shall be deemed duly delivered to and served upon the Purchaser by being left for him at the address mentioned in his tender unless and until he is represented by a solicitor.

*[Add other conditions of sale as in last Precedent.]*

#### FORM OF TENDER.

I —, of —, do this — day of — 19—, hereby tender the sum of £— for the purchase of the property [Lot —] described in the above particulars, and I enclose herewith a cheque for the sum of £—, being — per cent. on the amount of such purchase-money, and in case the Master certifies me to be the Purchaser I agree to purchase such property [Lot —] at the said price of £— in accordance with the above conditions and to pay the balance of the purchase-money [and also the valuation money (if any)] and to complete the purchase in accordance with the above conditions.

*[Signature.]*

Witness.

*[Signature and  
address of witness.]*

No. IV.

CONDITIONS on SALE of LIFE and REVERSIONARY INTERESTS,  
and a POLICY of LIFE ASSURANCE described in the PARTICULARS  
as follows :—

LOT 1.—*The income to arise during the life of A. B., a person aged — years or thereabouts, from the following investments, namely [state them], representing the trust fund settled by an Indenture of Settlement, dated the — day of —.*

LOT 2.—*One-fourth undivided share in reversion expectant on the death of C. D. (aged — years and upwards) in the following investments and property [state particulars] now representing the residuary estate of X. Y., late of, &c., deceased, who died on the — day of —, 1895 (h), subject to the payment of a share of any expenses to be hereafter incurred by the trustees in relation to the residuary estate (i).*

LOT 3.—*A policy of assurance on the life of E. F. (aged — years) for £—, effected with the — Assurance Society, dated the — day of —, and numbered —, subject to the payment of an annual premium of £—.*

1, 2, 3 AND 4. (*As in Precedent I., omitting the provisions as to rents, profits, and outgoings in clause 3.*)

5. On the completion of the purchase of Lot 1, the Purchaser shall be entitled to the same as from the — day of — next, and for this purpose the income for the then current half-year shall be apportioned between the Vendor and Purchaser. [The Vendor will furnish to the Purchaser a statutory declaration by — as to the age of the above-named A. B., which shall be accepted by him as sufficient evidence.]

As to the life interest forming Lot 1.

6. On the completion of the purchase of Lot 2, the Purchaser shall be entitled to all benefit and advantage thereof as from

As to the reversionary interest forming Lot 2 (k).

(h) This is to show that the testator died after the commencement of the Fin. Act, 1894. In the case of reversionary interests purchased or mortgaged before the 30th April, 1909, the new death duties imposed by the Fin. (1909-10) Act, 1910, do not apply: s. 64.

(i) It is assumed that all the death duties have been paid, and that no further duties will become payable on the death of the tenant for life.

(k) A condition throwing death duties where payable on the purchaser is unnecessary: *Re Repington*, 1904, 1 Ch. 811.

the day of sale. [The Vendor will furnish, &c., *statutory declaration as to age of C. D., as in preceding condition (l).*]

Recitals in a  
certain deed  
to be evidence.

7. An Indenture dated the — day of —, being an appointment of a new trustee of the Will of the testator X. Y. mentioned in the particulars, contains recitals to the effect that all the real and personal estate of the testator had been sold and converted into money; that out of the proceeds all the testator's funeral and testamentary expenses and debts, and the death duties payable in respect of his estate, and the legacies bequeathed by his Will had been paid, and that the residue consisted of the investments and property stated in the particulars. The said recitals shall be accepted by the Purchaser of Lot 2 as conclusive evidence of the facts and matters therein stated, and he shall require no further or other evidence thereof.

As to policy  
forming Lot 3.

8. Upon the completion of the purchase of the policy of assurance comprised in Lot 3, the Purchaser shall be entitled to all benefit and advantage thereof as from the day of sale, and he shall pay any premium which shall become payable in respect thereof between the day of sale and the completion of the purchase.

Evidence as to  
validity of  
policy.

9. The receipt for the last premium which became due on the said policy before the day of sale shall be deemed sufficient evidence that the said policy is in full force, and the Purchaser of Lot 3 shall not require any evidence of the age of E. F. mentioned in the particulars, or that his age was proved to the satisfaction of the assurance office, or any evidence in support of the statements on which the said policy was granted (*m*).

Vendor to  
execute  
assignments.

10. On the completion of the purchase of each Lot, the Vendor shall execute a proper assignment thereof to the Purchaser thereof, such assignment to be prepared by and at the expense of the Purchaser, and to be left by him at the office of the Vendor's solicitor at least three days before the day fixed for the completion of the purchase.

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(*l*) The declarations will not be required if the certificates of birth can be produced.

(*m*) Where a contract for the sale of a life policy was entered into in the belief that the assured was alive, but he was in fact dead, the purchaser was entitled to have the transaction set aside notwithstanding that it had been actually completed: *Scott v. Coulson*, 1903, 2 Ch. 249; 72 L. J. Ch. 600. Generally as to policies of life assurance, see Goodeve, *Pers. Property*, 4th ed., 139 *et seq.*; Withers on Reversions, pp. 173 *et seq.*

11. *Insert, if required, special conditions "As to documents." See Forms under Sect. VI., pp. 199 et seq., sup.*

12. If any mistake shall be found in the particulars as to the age of any person, or as to the amount or description of any trust fund or property, or in any other respect, the same shall not annul the sale, but compensation shall be made in respect thereof, the amount of such compensation to be settled in case of difference by two referees, one to be appointed by each party, or by an umpire to be appointed by the two referees before they proceed in the reference. But this condition is without prejudice to the Vendor's right to rescind under these conditions.

Compensation for mistakes.

13. Power to resell (*as in Precedent I., clause 12*).

MEMORANDUM (*as in Precedent I.*).

## No. V.

### CONDITIONS of SALE of STANDING TIMBER (*n*).

1. THE highest bidder shall be the Purchaser; and if any dispute shall arise between two or more bidders, the Lot in dispute shall either be put up again at the last undisputed bidding, or the auctioneer may determine the dispute and may also refuse any bidding, and withdraw, consolidate, or divide any Lots.

Highest bidder to be the purchaser.

2. THE Vendor shall not be answerable for the description of any Lot. The Purchaser of each Lot shall take it with all faults, errors of description or number, and subject to all risks. No person shall advance a less sum at each bidding than the sum fixed by the auctioneer, or retract a bidding, and the auctioneer

Purchaser to take each lot according to description and with all faults.

(*n*) Timber must not be sold separately from the land by trustees unless expressly authorized: *Cholmley v. Parton* (1825), 3 Bing. 267; 4 L. J. (O. S.) C. P. 41; *Cockerell v. Cholmley* (1827), 3 Russ. 565; *Re Duke of Rutland's S. E.*, 1900, 2 Ch. at p. 210; 69 L. J. Ch. 603.

Sale of timber by trustees.

Where a tenant for life is impeachable for waste he can cut and sell timber with the consent of the S. L. Act trustees or under an order of the Court, but three-fourths of the proceeds must be set aside as capital money: S. L. Act, 1882, s. 35; Wolst. Conv. Acts, 9th ed., 393.

Tenant for life.

A sale of growing timber to be taken away as soon as possible by the purchaser is not a contract or sale of land or any interest therein within s. 4 of the Statute of Frauds: *Marshall v. Green* (1875), 1 C. P. D. 35; 45 L. J. C. P. 153.

Sale of timber not within Statute of Frauds.

may bid once or oftener for each Lot for the benefit of the Vendor.

Payment of  
purchase-  
money.

3. THE Purchaser of each Lot shall at the close of the sale, or of his bidding if required, pay to the auctioneer a deposit of 20 per cent. in part payment of his purchase-money, and give his name and address, and shall also sign an agreement to complete the purchase according to these conditions; and each Purchaser shall give to the Vendor a bill payable at seven months for the unpaid purchase-money for the oak, and a bill payable at four months for the unpaid purchase-money for the remainder of the timber included in the Lot purchased by him, and each Purchaser shall, if required by the Vendor or his agent, provide a responsible person or persons to guarantee such bills, and such bills shall be prepared and stamped at the cost of the Purchaser giving the same, and shall be given to the auctioneer at the close of the sale, or within one week from the day of sale. No Purchaser shall enter on his Lot or Lots, or commence cutting timber, until a bill shall have been given by him as hereinbefore provided, together with such further security as the Vendor may require, and every Purchaser shall give such further security as the Vendor may from time to time require. If any Purchaser commits any breach of the foregoing condition he shall be deemed a trespasser, and liable to pay to the Vendor treble the amount of his purchase-money for such Lot or Lots as liquidated damages. The Purchasers shall respectively pay to the auctioneer sixpence in the pound in addition to the purchase-money for fees.

How the  
timber is to  
be felled and  
removed.

4. THE trees shall be felled with as much care as possible, and the bark and wood thereof shall be properly stacked, and removed only by the usual roads, and the Purchasers shall be accountable for all damage done to any of the remaining timber, or otherwise to the estate of the Vendor, or to cattle on the land; no tree shall be rooted up without the permission of the Vendor or his agent, and every Purchaser before the trees are thrown shall sever and cut off such boughs as are necessary to prevent damage; and if any workman shall be objected to by the Vendor, the Purchaser employing such workman shall, if required by the Vendor or his agent, discharge such workman. Each Purchaser shall forfeit £5 for every tree or sapling cut which has not been marked for sale. No dogs are to be taken

on any part of the estate, either by the Purchasers or their workmen. All the oak timber shall be removed from the land during dry or frosty weather, having regard to the season, on or before the — day of —, 19—, and the remainder of the timber shall be removed and cleared away before the — day of —, 19—, [except Lots —, which shall be removed before the — day of —, 19—]. All Lots remaining after the time before mentioned shall be forfeited to the Vendor. Each Purchaser whose purchase-money does not exceed £10 shall pay for the same on or before the — day of —, 19—. The whole of the tops shall be properly bundled immediately after the trees are felled, and shall be removed from off the land within one calendar month after such felling, and if not removed as aforesaid shall be forfeited to the Vendor.

5. No Purchaser shall enter (o) on any arable land after the same shall be sown with corn, or upon any grass land after the same is laid up until mown, nor upon any young grass, turnips, or other crops, without the consent of the Vendor, or of the respective occupiers, until the crops are cleared, and the whole of the timber shall be removed only by the roads and through the gaps appointed by the Vendor or his agent. No Purchaser shall sink pits for the conversion of his timber on the estate without the consent of the Vendor or his agent. Any injury or damage done to the property of the Vendor or his tenants shall be ascertained by the auctioneer or by any person whom he may appoint, whose award shall be final. The specified number of trees mentioned in the particulars or catalogue shall be taken as correct. The whole of the timber shall be felled by the respective Purchasers at their own expense, [except Lots —, which shall be felled by and at the expense of the Vendor].

When the timber is to be carried away, and how damage to be paid for.

6. THE Purchasers of the pollards, saplings, poles, hurdlewood, and underwood, shall pay for the same at the close of the sale. The pollards, saplings, and poles shall be cleared off the premises by the — day of —, and the hurdlewood and underwood by the — day of —. The Purchasers of the hurdlewood shall not cut any saplings that are marked [nor any saplings that are, in the opinion of the Vendor or his agent, likely to become trees].

Condition as to paying for and clearing away pollards, saplings, &c.

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(o) See *Jones v. Earl of Tankerville*, 1909, 2 Ch. 440; 78 L. J. Ch. 674.

Provisions in case of bankruptcy of purchaser before payment of purchase-money, &c.

7. No part of the timber, trees, wood, or bark shall be in anywise liable to be seized or taken by any person other than the Vendor for the debts, or other engagements, if any, of the Purchasers, until the whole of the purchase-money is paid, and satisfaction is made for damages as aforesaid, notwithstanding any bankruptcy of or any other thing whatsoever affecting the Purchasers or any of them. The carriages used shall have broad wheels, and the usual roads shall not be deviated from except with the consent of the Vendor or his agent.

Provisions for Purchaser refusing to comply with previous conditions.

8. If any Purchaser shall refuse or neglect to comply with the foregoing conditions, or attempt to remove any of the timber from the land before the purchase-money is paid or security given as hereinbefore provided, then in addition to the provisions of condition 3 his deposit money shall be forfeited to the Vendor, who shall be at liberty by himself or his agent to follow and stop the timber wherever it may be found, and to resell the same by public auction or private contract, and the deficiency, if any, together with all expenses attending the resale, shall be made good by the defaulter or defaulters at this present sale, and be recoverable as liquidated damages, and any increase of price shall belong to the Vendor.

## PART III.

PRECEDENTS OF AGREEMENTS FOR SALE BY  
PRIVATE TREATY.

## No. I.

AGREEMENT *for* SALE *applicable to* FREEHOLDS, COPY-  
HOLDS, *and* LEASEHOLDS (*a*).

AN AGREEMENT made the — day of — 19—, BETWEEN Parties.  
A. B., of, &c. (hereinafter called the Vendor), of the one part, and Agreement to  
C. D., of, &c. (hereinafter called the Purchaser), of the other part. sell and  
purchase.

WHEREBY it is agreed as follows :—

1. THE Vendor shall sell and the Purchaser shall purchase at Freeholds,  
the price of £—, the property hereinafter mentioned, [and  
the fee simple thereof in possession],

[*Or in the case of copyholds*, and the inheritance thereof in Copyholds,  
possession according to the custom of the Manor of — in the  
County of —,

*Or in the case of leaseholds (b)*, held under a Lease [Underlease] Leaseholds,  
dated the — day of — for the term of — years from the  
— day of — *In the case of an underlease add* [except the  
last — days thereof],

At the yearly rent of £—, and all the term and interest  
granted by that Lease [Underlease] subject to the lessee's [under-  
lessee's] covenants and the conditions therein contained and]

Subject to the tenancies (*c*) [*or* subject to the leases mentioned Tenancies,

(a) See notes generally to Prec. I., "General Conditions." Some of the Forms under the title "Special Conditions," *sup.*, will require to be slightly modified when used on a sale by private treaty, *e.g.*, for "date of sale" say "date hereof," instead of referring to the "Particulars" refer to "the Schedule hereto."

(b) If there are any onerous covenants, they must be disclosed; the purchaser must be given a fair opportunity of ascertaining for himself the Contents of  
terms of such covenants, otherwise he will not be bound to complete; see lease or under-  
Forms Nos. 41 and 81, and the notes thereto. It should be stated that the purchaser has inspected a copy of the lease and shall be deemed to have notice of its contents.

(c) Under these words the purchaser is not fixed with notice of the terms

in the — Schedule hereto], [and to the incumbrances mentioned in the — Schedule but otherwise free, &c.] but free from incumbrances, that is to say:

Parcels.

ALL THAT, &c. (*d*), —, which premises are more particularly described in the — Schedule hereto, and are delineated on the plan hereto annexed, and thereon coloured — (*e*).

Time for completion.

2. THE Purchaser [*where there is a deposit*] having this day paid to the Vendor (*f*) the sum of £—, as a deposit and in part payment of his purchase-money (*g*), shall pay [the balance of] his purchase-money on the — day of — next, at the office of Messrs. —, No. — Street, in —, the solicitors of the

of the tenancy as between himself and his vendor: *Caballero v. Henty* (1874), L. R. 9 Ch. 447; 43 L. J. Ch. 635; Dart, 7th ed., 884, 885. There must be an express condition.

(*d*) For forms of parcels see the forms preceding “Purchase Deeds,” *inf.*

Variation where several leases are sold.

(*e*) Where several leases or underleases are sold together (see note at p. 236 for form of Schedule), instead of the first paragraph, say:—

The Vendor shall sell and the Purchaser shall purchase at the price of £—, ALL THOSE pieces of land with the messuages thereon shortly described in the third column of the Schedule hereto, free from incumbrances, for the residues of the respective terms mentioned in the fourth column of the same Schedule granted by the several leases [underleases] the dates whereof are mentioned in the first column of the same Schedule, at the several rents mentioned in the fifth column of the same Schedule, subject to the lessee's [underlessee's] covenants, and the conditions contained in the said leases [underleases] and subject also to the tenancies affecting the premises.

Deposit on sale by tenant for life.

(*f*) There is frequently no deposit upon a sale by private contract. If there is a deposit and the vendor is tenant for life, the following will be substituted for the words in the text:—

having this day paid the sum of £— as a deposit and in part payment of his purchase-money to the Vendor's solicitors as agents for the Settled Land Act trustees of the Settlement [Will] under which the said hereditaments stand limited. The deposit should not be paid to stakeholders if the Vendor is in a fiduciary position.

(*g*) If timber, fixtures, &c., are also to be paid for, see the Forms under the heading “As to the Auction, &c.”

Vendor, at which time and place the purchase shall be completed, and the Purchaser paying [the balance of] his purchase-money shall as from that day be let into possession or into receipt of rents and profits, and shall pay all outgoing, and up to that day all rents, rates, taxes, and other outgoing shall (if necessary) be apportioned, and the balance shall be paid by, or allowed to, the Purchaser on completion, and if from any cause whatever, other than wilful default on the part of the Vendor, the completion of the purchase is delayed beyond the last-mentioned day, [the balance of] the purchase-money shall bear interest at the rate of £4 (*h*) per cent. per annum from that day to the day of actual payment thereof.

Possession.

Interest in case of delay.

3. THE Purchaser shall within — days after delivery of his abstract send to the solicitors of the Vendor a statement in writing of all the objections and requisitions (if any) to or on the title or evidence of title, or the abstract or this Agreement, and subject thereto the title shall be deemed accepted, and all

Time for delivery of requisitions;

(*h*) A purchaser of freeholds should object as a general rule to pay a higher rate of interest than £4 per cent.; even at this rate, the condition may in some cases operate unfairly on him. The delay in completion may arise from the state of the title or the slowness of the vendor's solicitor in replying to the requisitions, or from many causes over which the purchaser can exercise no control; thus he may find himself in the position of having to pay interest while his money is lying idle. Under these circumstances a purchaser is sometimes advised to insist on a proviso being added to the following effect: "Provided always, that if the delay in completion shall arise from the state of the title, or from any other cause not being the Purchaser's fault, the Purchaser shall be at liberty to place [the balance of] his purchase-money on a deposit account at the — Bank, or on any securities which he may think fit, in his own name and at his own risk, and give notice thereof to the Vendor, and thereupon the Vendor shall be entitled to receive from the Purchaser such interest only as shall be actually produced by such deposit or investment." If nothing is said about interest, the purchaser's obligation in this respect will be left to depend on the rule of equity, viz.: That from the day fixed for completion the purchaser is entitled to receive the rents, and must pay interest at £4 per cent. on his purchase-money; but unless the delay is his own fault, he may relieve himself of the liability to interest by giving the vendor notice that his money is lying idle: *Bennett v. Stone*, 1903, 1 Ch. at p. 524; 72 L. J. Ch. 240; and see *Re Bagley-Worthington and Cohen*, 1909, 1 Ch. 648; 78 L. J. Ch. 351.

Interest.

Power for purchaser to deposit or invest his purchase-money.

Where there is no condition as to interest.

and replies to  
answers.

Power to  
rescind.

Commence-  
ment of title.

Particular  
points arising  
on the ab-  
stract.

Identity, &c.

objections and requisitions not included in any statement sent within the time aforesaid shall be deemed waived, and an abstract, though in fact imperfect, shall be deemed perfect, except for the purpose of any further objections or requisitions which could not be taken or made on the information therein contained, and an answer to any objection or requisition shall be replied to in writing within ten days after the delivery thereof, and if not so replied to shall be considered satisfactory, and time shall be deemed in all respects as of the essence of this clause. If the Purchaser shall take any objection or make any requisition which the Vendor is unable or, on the ground of expense, unwilling to remove or comply with, or if any question shall arise as to the conveyance, and the Purchaser shall not withdraw such objection or requisition or waive the question within ten days after being required so to do, the Vendor may by notice in writing delivered to the Purchaser or his solicitor, and notwithstanding any intermediate negotiation or litigation, rescind this Agreement [*where there is a deposit*, and shall within one week after such notice repay to the Purchaser his deposit money], and the Purchaser shall return forthwith all abstracts and papers in his possession belonging to the Vendor, and shall not make any claim on the Vendor for costs or otherwise.

4. THE abstract of title shall commence with an Indenture dated the —— day of ——, being [a conveyance on sale, or a mortgage, or a settlement, &c. (i)].

5. *Insert here any conditions required for precluding a Purchaser from objecting to the title as shown by the Abstract. Also, if required, conditions as to contents of leases, stamps, and registration; see Forms under Sect. III., "Matters arising on the Abstract," sup.*

6. *Here will follow, if required, conditions relating to identity, land tax, tithe rent-charge, apportionments, restrictive covenants already affecting the land, &c.; see Forms under Sect. IV., "As to Identity and other Matters arising on the Particulars," sup.*

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(i) See the Forms under Sect. II., "As to the Commencement of Title and Contents of the Abstract," where the necessary provisions for cases of copyholds and leaseholds and particular classes of property will be found. Where valuable leasehold property is sold a purchaser usually makes some inquiries as to the lessor's title before the contract is signed.

7. *See forms as to the form of the Conveyance, restrictive covenants to be imposed, &c., under Sect. V., "As to the Conveyance and its Contents," sup. ; and see Form No. 115 where the sale is made under the Settled Land Acts.* Form of conveyance.

8. (1) THE conveyance (*k*) to the Purchaser shall be prepared by him and at his own expense, and the engrossment thereof shall be delivered at the office of the solicitors of the Vendor at least ——— days before the day fixed for completion for execution by the Vendor and other necessary parties (if any), and the draft of such conveyance for perusal and approval on behalf of the Vendor and other necessary parties (if any) shall be left at the said office at least seven days before delivery of the engrossment [and time shall be of the essence of this clause]. Preparation of conveyance.

(2) Completion shall not be delayed on account of the non-payment of increment value duty (if any), but the Vendor shall before the date fixed for completion produce or furnish the conveyance and all such other documents and information as the Commissioners of Inland Revenue may require to enable them to ascertain whether any duty is payable and to assess the duty (if any), and if required furnish security for the payment of the duty, and on completion shall hand over the conveyance with a stamp thereon in accordance with sub-section 3 of section four of the Finance (1909-10) Act, 1910. And after completion the Purchaser shall, if required, produce to the Commissioners free of cost any documents which may be handed over to him. Delivery of draft.

9. *Insert conditions, if required, as to the retention of documents, their production, &c. See Forms under Sect. VI., "As to Documents," sup. (m).* Provisions as to stamping in respect of increment value duty (*l*).

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(*k*) In the case of copyholds, unless the sale is under the S. L. Acts or the Lands C. C. Act, or is to be effected by bargain and sale, the expression "deed of covenant to surrender" should in this condition be used in place of the word "conveyance." The latter word is applicable to leaseholds as well as to freeholds, but if preferred "assignment" may be used in the case of leaseholds. Documents.

(*l*) See Fin. (1909-10) Act, 1910, ss. 3 (6) and 4. If it is desired to throw the duty on the purchaser, use Form No. 159A, *sup*.

(*m*) Where it is desired that the cost of production of documents in the custody of mortgagees shall be thrown on the vendor (see *Re Willott and Argenti* (1889), W. N. 66; 60 L. T. 735; and Wolst. Conv. Acts, 9th ed., 25), the following condition should be added:— Copyholds.

For the purpose of the Conveyancing and Law of Property Act, 1881, section three, sub-section 6, documents in the possession of Documents in custody of mortgagees. Costs of production thrown on vendor.

Compensation, &c.

10. *Add conditions as to compensation or no compensation for errors in description, &c., and as to fire insurance, if required ; see Forms under Sect. VII., "As to Compensation and Miscellaneous Matters," sup.*

Power to resell on default.

11. If the Purchaser shall neglect or fail to perform this Agreement on his part [*where there is a deposit* his deposit money shall be forfeited to the Vendor, and] the Vendor may with or without notice resell the premises without previously tendering a conveyance to the defaulting Purchaser, and any resale may be made by auction or private contract at such time, subject to such conditions, and in such manner generally as the Vendor thinks proper ; and if thereby the Vendor shall incur a loss by reason of diminution in price or of expenses incurred, or both, the Purchaser under this Agreement shall pay to the Vendor the amount of such loss as liquidated damages [*receiving credit for the deposit*] and on any resale by auction the premises may be bought in, and all expenses consequent on an unsuccessful attempt to resell shall be forthwith paid to the Vendor by the purchaser under this Agreement (*u*).

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO (*o*).

the Vendor's mortgagee, and which, under section sixteen of the same Act, the Vendor is entitled to inspect, shall be deemed to be in the Vendor's possession.

Power to resell where sale by private treaty.

(*u*) An impression prevails in some quarters that a purchaser should object to this clause or part of it. There is no sufficient reason for this. The position of the parties is practically the same whether the clause in the text is omitted or not ; see note to clause 12, *Prec. I.*, "General Conditions," p. 217, *sup.* ; *cf.* 43 Sol. J. 601—602.

Schedule of several leases.

(*o*) In the case of a sale of several leases the schedule may be as follows :—

THE SCHEDULE ABOVE REFERRED TO.

| Date of Lease. | Parties to Lease.                                  | Short Description of Property demised.                           | Term.           | Yearly Rent. |
|----------------|--|--|-----------------|--------------|
| 1. 19—         | A. B. of the one part and C. D. of the other part. | A piece of land at — with a messuage known as — erected thereon. | 99 years from — | £9 5 0       |
| 2. 19—         | &c.  | &c.  | 19— &c.         | &c.          |

Schedule of underlease.

The following is a form of description in a schedule of property held by underlease :—

The Messuage known as No. —, — Street, in the Parish

No. II.

AGREEMENT *for SALE by TENANT for LIFE, with FORM of NOTICE to S. L. Act TRUSTEES.*

AN AGREEMENT made the — day of — BETWEEN A. B., of, &c. (*tenant for life*, hereinafter called the Vendor), of the one part and C. D., of, &c. (hereinafter called the Purchaser), of the other part.

*This Precedent will follow the last Precedent; the deposit (if any) may be made payable to the solicitors "as the agents of the Settled Land Act Trustees." The 8th clause will be preceded by Form No. 115, sup. If required, add one of the following conditions:*

*Where the notice under S. L. Act, s. 45 (p), has not expired or been*

of —, with the stables and appurtenances thereto belonging, now in the occupation of —, which premises were, by an Indenture of Underlease, dated the — day of —, and made, &c., demised to — (*original sub-lessee*), for the term of ninety-nine years (except the last ten days thereof), from the — day of —, at the yearly rent of £—, and subject to the covenants and conditions contained in the said Underlease, and on the underlessee's part to be observed and performed.

(p) The following is the usual form of notice to sell, &c., by a tenant for life:—

To —, of —, and —, of —, Trustees for the purposes of the Settled Land Acts, 1882 to 1890, of the Settlement dated, &c. [or the Will of —, deceased, dated, &c.] [*or where the settlement consists of several instruments, say*] the Settlement effected by an Indenture dated, &c. [the Will of —, deceased, dated, &c.], and, &c.

I [We] hereby, pursuant to section forty-five of the Settled Land Act, 1882, give you notice of my [our] intention to sell [exchange, enfranchise, partition, or lease, *as the case may be*] under the powers of the Settled Land Acts, 1882 to 1890, the settled land or part or parts thereof whenever it becomes necessary or expedient.

Dated this — day of —.

See S. L. Act, 1882, s. 45; S. L. Act, 1884, s. 5; S. L. Act, 1890, s. 7 (i). There must, at the date of notice given, be not less than two trustees, unless a contrary intention is expressed in the settlement, and notice must be sent in a registered letter to each of the trustees, and also to their solicitor (if any

Notice of intention to sell by tenant for life.

Form of notice.

Notice required.

*waived.* This Agreement shall not be binding on the Vendor if proceedings are taken to prevent the sale before the — day of —.

Application  
to Court to  
authorise sale  
of mansion  
house, &c.

*Where the property sold includes a principal mansion house (q), pleasure grounds, park, or lands usually occupied therewith, and the consent of the trustees of the settlement cannot be obtained.* The Vendor will forthwith apply for and endeavour to obtain an Order (r) of the Chancery Division of the High Court of Justice sanctioning this Agreement, and in case such Order shall not be obtained before the — day of — next, this Agreement shall become void [*where there is a deposit*, and the Vendor shall within one week after such date repay to the Purchaser his deposit money], and the Purchaser shall thereupon return forthwith all abstracts and papers in his possession belonging to the Vendor, and shall not make any claim on the Vendor for costs or otherwise.

AS WITNESS, &c. [*add Schedule*].

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is known to the tenant for life), not less than one calendar month before completion (S. L. Act, 1882, s. 45), unless all the trustees have in writing waived notice, or accepted shorter notice (S. L. Act, 1884, s. 5 (3)), or the settlement dispenses with notice; but notice is unnecessary in the case of certain leases not exceeding twenty-one years (S. L. Act, 1890, s. 7 (1)); and a person dealing in good faith with the tenant for life need not inquire as to the giving of any such notice (S. L. Act, s. 45 (3); and see generally Wolst. Conv. Acts, 9th ed., 400 *et seq.*). It is sufficient if the notice expires or is waived before the date of completion: *D. of Marlborough v. Sartoris* (1886), 32 Ch. D. 616; 56 L. J. Ch. 70; *Hatten v. Russell* (1888), 38 Ch. D. 334; 57 L. J. Ch. 425; but there is a possibility of proceedings being taken to stop the sale.

Notice of  
general  
intention.

Notice of a general intention is sufficient in the case of a sale, exchange, partition, or lease: S. L. Act, 1884, s. 5 (1). See *Re Ray's S. E.* (1884), 25 Ch. D. 461; 53 L. J. Ch. 205, as to a mortgage or charge.

Principal  
mansion and  
park.

(q) If the property sold includes a principal mansion house, pleasure grounds, park, or lands usually occupied therewith (as to which see S. L. Act, 1890, s. 10 (3)), either the consent of the trustees of the settlement or an order of the Court must be obtained (*ib.*, sub-s. 2). The consent need not be in writing: *Gilbey v. Rush*, 1906, 1 Ch. 11; 75 L. J. Ch. 32; on this s. see Wolst. Conv. Acts, 9th ed., 446. For definitions of "principal mansion house," see *Re Wythes' S. E.*, 1908, 1 Ch. 593; 77 L. J. Ch. 319; and of "park," see *Pease v. Courtney*, 1904, 2 Ch. 503; 73 L. J. Ch. 760.

(r) For form of summons, see S. L. Act Rules, 1882, Appx., Form No. 6 and (for a sale by the Court) Form No. 7; and of orders, Seton, 6th ed., 1833-34.

No. III.

AGREEMENT *by* TENANT *for* LIFE *for* SALE *of* HEIR-  
LOOMS (s), *subject to the leave of the Court.*

AN AGREEMENT made this — day of — BETWEEN A. B., of, &c. (*tenant for life*, hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part.

WHEREAS under the Will dated the — day of —, and proved on the — day of —, of P. M., deceased, who died on the — day of —, the Vendor is now tenant for life in possession of certain settled lands in the County of W. and of certain chattels or heirlooms, including the pictures and china mentioned in the Schedule hereto now in the mansion house of L. in the said County, which were bequeathed to the Trustees of the said Will Upon trust to devolve as heirlooms along with the said settled lands until a tenant in tail by purchase should attain the age of twenty-one years :

Recital of Will.

AND WHEREAS H. M., of, &c., and P. K., of, &c., are the present Trustees of the said Will for the purposes of the Settled Land Acts, 1882 to 1890 (t).

NOW IT IS HEREBY AGREED as follows :—

1. THE Vendor will sell and the Purchaser will purchase, at the price of £—, the pictures and china mentioned in the Schedule hereto.

Agreement for sale.

2. WITHIN fourteen days after notice in writing has been given to

Payment of purchase-money,  
Heirlooms.

(s) See S. L. Act, 1882, s. 37. A sale of heirlooms cannot be made by a tenant for life without an order of the Court, nor will the Court ratify a sale made without an order: *Re Ames*, 1893, 2 Ch. 479; 62 L. J. Ch. 685; but may direct the trustees to take no steps for their recovery: S. C.; see also *Re Smith's S. E.*, 15th December, 1888, S. 2564. The order will not be made simply for purposes of convenience: *D'Eyncourt v. Gregory* (1876), 3 Ch. D. 635; 45 L. J. Ch. 741. As to when a sale will be sanctioned, see *Re Hope*, 1899, 2 Ch. 679; 68 L. J. Ch. 625; and generally on the s. Wolst. Conv. Acts, 9th ed., 393 *et seq.* This agreement, being for the sale of "goods, wares, or merchandise," is exempt from stamp duty: Stamp Act, 1891, s. 39 (1); Highmore, 2nd ed., 142.

(t) Trustees with power to sell the land are sufficient: *Constable v. C.* (1886), 32 Ch. D. 233; 55 L. J. Ch. 491; but not if the power is for limited and not general purposes: *Re Coults S. E.*, 1905, 1 Ch. 712; 74 L. J. Ch. 378.

and delivery  
of heirlooms.

Interest on  
purchase-  
money.

As to the title  
to be shown.

Proceeds of  
sale of heir-  
looms.

Heirlooms and  
land settled by  
separate  
instruments.

the Purchaser or left for him at his address above stated that an Order of the Court has been made sanctioning the sale hereby agreed on he will pay the said sum of £—— (u) into the bank of Messrs. —— to the credit of the said H. M. and P. K., or other the person or persons (if any) (v) entitled to receive the same under such Order, and a receipt for the same signed by the said H. M. and P. K., or other person or persons aforesaid, shall be delivered to the Purchaser by the bankers, and upon production at the mansion house of L., aforesaid, of such receipt after not less than seven days' previous notice in writing given to the Vendor of the day when it will be produced, the said pictures and china shall be delivered to the Purchaser or to any person authorised by him in writing to receive the same, and shall be removed from the mansion house at his own risk and cost.

3. If the Purchaser shall not pay the said purchase-money on the day and in manner hereinbefore provided, the same shall bear interest at the rate of £4 per cent. per annum from that day to the day when the same and any interest due thereon shall be paid into the bank and to the credit aforesaid, and the Purchaser shall not be entitled to delivery of the receipt aforesaid until such interest is paid.

4. THE Purchaser or his solicitor shall be entitled to inspect at the office of Messrs. ——, No. —— Street in ——, a copy of the testator's Will and the inventory of heirlooms held on the trusts thereof (which inventory includes the said pictures and china) and the Deed [*or* an office copy of the Order] under which the said H. M. and P. K. are the present Trustees of the said Will, but shall not be entitled to any abstract or copy of such Will, inventory or deed [*or* Order] and shall not require any other evidence of the title of the Vendor as tenant for life of the said heirlooms, or that the said H. M. and P. K. are the present Trustees of the said Will for the purposes of the said Acts.

(u) The purchase-money is "capital money" (S. L. Act, 1882, s. 37 (2)), but would seem to be personal estate until invested in land: *D. of Marlborough* (1886), 32 Ch. D. 1; 55 L. J. Ch. 339. The Court may direct the proceeds to be applied in the repair of heirlooms subject to the same settlement: *Re Waldgrave* (1899), 81 L. T. 632; (1899), W. N. 240.

(v) Where the land and heirlooms are settled by separate instruments, the trustees of the settlement of the land would appear (see Wolst. Conv. Acts, 9th ed., 394) to be the proper persons to receive the money; but see *Re Lord Stafford's Settlement and Will*, 1904, 2 Ch. 72; 73 L. J. Ch. 560.

5. THE Vendor will forthwith give such notices (if any) as are necessary in order to enable the sale hereby agreed on to be made and shall also apply for and endeavour to obtain an Order of the Chancery Division of the High Court of Justice sanctioning such sale and this Agreement (y). And in case an Order sanctioning such sale and this Agreement shall not be obtained before the — day of —, this Agreement shall become void.

As to obtaining order of Court.

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

[*To contain a description of the pictures and china.*]

# No. IV.

## AGREEMENT for payment of PURCHASE-MONEY by INSTALMENTS (z).

AN AGREEMENT made the — day of —, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part.

Parties.

WHEREAS the Vendor has agreed to sell and the Purchaser has agreed to purchase at the price of £—, the property at — (hereinafter called “the premises”) described [as Lot —] in the sale plan and printed particulars and conditions of the sale by auction by Messrs. —, at —, on the — day of — last, of the — estate of the Vendor, subject to the said particulars and conditions of sale [which include certain restrictions, stipulations, and conditions as to building on, and user of, the premises, and other matters]:

Agreement for sale.

AND WHEREAS the Purchaser has paid to the Vendor the sum of £— as a deposit in part payment of the purchase-money, and has accepted the Vendor's title to the premises as at the date of this Agreement:

Payment of deposit.

AND WHEREAS the Purchaser has requested the Vendor to accept payment of the balance of the said purchase-money,

Balance to be payable by instalments.

---

(y) See S. L. Act, 1882, s. 37 (3); and for forms of summons, see S. L. Act Rules, 1882, Appx., Form No. 6, and (for a sale by the Court) Form No. 7; and of orders, Seton, 6th ed., 1833-34.

Form of summons.

(z) *Cf.* Forms Nos. 111 and 112.

together with interest thereon, in manner and upon the terms hereinafter appearing:

NOW IT IS HEREBY AGREED as follows:—

Payment of  
balance by  
instalments.

1. THE Purchaser shall pay to the Vendor the sum of £—, being the balance of the said purchase-money, by — equal [half] yearly instalments of £— each, to be paid on the — day of — [and the — day of — ] in every year, the first instalment to be paid on the — day of — next.

Interest on  
instalments.

2. ON each [half] yearly day the Purchaser shall, in addition to the instalment payable on that day, pay to the Vendor interest on the balance of the purchase-money remaining due up to that day, at the rate of £— per cent. per annum, computed from the — day of — (being the day fixed for completion of the purchase by the aforesaid conditions of sale) or the next preceding [half] yearly day, as the case may be.

Power to pay  
off whole of  
balance.

3. THE Purchaser may (subject to clause eight hereof), at any time on giving seven days' previous notice in writing to the solicitors of the Vendor, pay off the entire balance of the purchase-money for the time being remaining due, together with all interest thereon to the date of payment.

Purchaser to  
pay additional  
costs in  
respect of  
variations in  
title, &c.

4. ALL additional costs and expenses, whether in respect of evidence of title or conveyance, necessitated by any devolution of title, whether of the Vendor or Purchaser, subsequent to the date of this Agreement, shall be borne and paid by the Purchaser.

Conveyance  
to Vendor.

5. (1) So soon as the balance of the purchase-money and all interest thereon and all such additional costs and expenses as aforesaid shall have been paid by the Purchaser, the Vendor shall execute a conveyance to the Purchaser in the form of the conveyance contained in the Schedule hereto, with such modifications only as any variations in the state of the title may require.

(2) The conveyance to the Purchaser shall be prepared by him and at his own expense, and the engrossment thereof shall be delivered at the office of the solicitors of the Vendor at least — days before the day of actual completion for execution by the Vendor and other necessary parties (if any), and the draft of such conveyance for perusal and approval on behalf of the Vendor and other necessary parties (if any) shall

be left at the said office at least seven days before delivery of the engrossment.

6. *Insert and adapt Form No. 141 as to documents.*

Documents.

7. NEITHER the Purchaser, nor the persons deriving title under him, shall before conveyance let, sell, or otherwise part with the possession of the premises, or any part thereof, or assign his or their interest under the contract for sale and this Agreement, without the previous consent in writing of the Vendor, or the persons deriving title under him [and until conveyance the Purchaser and the persons deriving title under him shall fully perform and observe all the restrictions, stipulations, and conditions contained or referred to in the aforesaid printed particulars and conditions of sale, in the same manner in all respects as if the said sale had been fully completed in accordance with the said conditions of sale as on the date thereby fixed for completion].

Purchaser not to deal with property or the contract without consent.

8. If the Purchaser shall make default in payment of any instalment or interest or costs or expenses payable under this agreement for a period of fourteen days after the date hereinbefore fixed for payment of the same, or after demand, as the case may be, or shall otherwise neglect or fail to comply with any of the provisions herein contained, he shall be deemed to have neglected or failed to comply with the aforesaid conditions of sale within the meaning of the last of such conditions, and all interest actually paid under this Agreement and any money expended by the Purchaser in improving the premises shall (in addition to the deposit) be forfeited to the Vendor, and any further instalments of purchase-money actually paid under this Agreement may be retained by the Vendor, without liability to pay interest, in or towards satisfaction of the amount payable by the Purchaser to the Vendor as liquidated damages, or in respect of expenses, in accordance with the last of such conditions of sale, provided that the balance (if any) of the amount of such further instalments beyond the amount so payable by the Purchaser shall be repaid to him within six calendar months from the date of default.

Provision if Purchaser makes default.

9. THE Purchaser shall forthwith furnish the Commissioners of Inland Revenue with all necessary particulars to enable this Agreement to be stamped for the purposes of increment value duty, and the Vendor shall either pay the same (if any), or give

Increment value duty.

such security for the payment thereof as the Commissioners shall require (a).

As witness, &c.

THE SCHEDULE ABOVE REFERRED TO.

THE FORM OF CONVEYANCE ABOVE REFERRED TO.

[*Here set out the agreed Form.*]

## No. V.

AGREEMENT *for SALE where PART of the PURCHASE-MONEY is to REMAIN on MORTGAGE of the PROPERTY for A CERTAIN PERIOD. VARIATIONS where the MORTGAGE is to PROVIDE for repayment by INSTALMENTS (b).*

Parties.

AN AGREEMENT made the — day of —, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part.

Agreement to sell and purchase.

1. THE Vendor agrees to sell, and the Purchaser agrees to purchase, ALL THOSE, &c. (c), and the inheritance thereof in fee simple in possession, at the price of £—.

Time for completion of purchase.

2. THE purchase shall be completed on the — day of — next, and from that day the Purchaser shall be entitled to the rents and profits of the premises, all outgoing up to that day being discharged by the Vendor. If from any cause whatever the purchase shall not be completed on the said — day of —, the Purchaser shall pay to the Vendor interest on the said purchase-money from the said — day of — until the completion of the purchase at the rate of £4 per cent. per annum.

3, 4, 5, 6, AND 7.—*These clauses will follow the corresponding clauses in Precedent I., pp. 233 et seq., sup., but references to a deposit will be omitted.*

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(a) It is conceived that this is not an “agreement for a transfer intended to be followed shortly by an actual conveyance” within the meaning of the Increment Value Duty Rules, r. (7) (and see Fin. (1909-10) Act, 1910, s. 4 (7)), and that this contract should bear the stamp duty. If the transaction falls through, the duty will be returned: s. 4 (6); r. 17. The conveyance when executed must be stamped with a denoting stamp to show that the duty has been paid and to keep the contract off the title: s. 4 (7); r. (7).

(b) *Cf.* Forms Nos. 110 and 112.

(c) For forms of parcels, see Forms preceding “Purchase Deeds,” *inf.*

8. (1) Upon the completion of the purchase, the Vendor shall execute to the Purchaser a proper assurance of the premises, to be prepared by and at the expense of the Purchaser. *Add provisions as to stamping in respect of increment value duty as in Precedent I., clause 8 (2), p. 235, sup. (d).*

Vendor to execute assurance.

9. Upon the completion of the purchase, the Purchaser shall pay to the Vendor the sum of £—— (part of the said purchase-money), and the sum of £—— (the balance thereof) shall remain on mortgage of the premises, at interest at the rate of £4 per cent. per annum, payable half-yearly. By the mortgage deed the balance of the purchase-money shall be made payable on the —— day of —— next, but (c) subject to a provision precluding the Vendor from calling in the same during a term of —— years, from the —— day of —— next, if interest shall be regularly paid in the meantime within thirty days after the several half-yearly days for payment thereof

Part of purchase-money to remain on mortgage for time certain.

(d) In this case the conveyance should bear the increment value duty stamp.

(e) If the principal money is to be payable by instalments, omit the rest of clause 9, and substitute as follows : —

Variation where balance of purchase-money to be paid by instalments.

Subject to a provision that if the balance of the purchase-money is paid by equal half-yearly instalments of £—— each, the first instalment to be paid on the —— day of —— next, and every subsequent instalment on the —— day of —— and the —— day of —— in every year, or within thirty days thereafter, until the whole of the said balance is fully paid; and if with every instalment interest at the rate of £—— per cent. per annum is paid on the principal sum remaining due, then and in such case the payment of the principal money shall not be required otherwise than by such instalments as aforesaid; and by the mortgage deed it shall be also provided that the Purchaser may pay off the whole of the principal money and interest remaining due on any of the aforesaid half-yearly days on giving to the Vendor at least six calendar months' notice of his intention so to do; and it shall also be provided that upon any sale purporting to be made under the statutory power of sale a Purchaser shall not be bound or concerned to see or inquire whether default has been made in payment of the principal money or any instalment thereof, or any interest thereon, or be affected by notice that no such default has been made.

respectively, and if the Purchaser shall duly observe the covenants (other than the covenants for payment of principal and interest) to be contained in the mortgage deed ; and also a provision precluding the Purchaser from compelling the Vendor to receive the principal money before the expiration of the said term.

Mortgage to be executed immediately after completion.

10. THE said mortgage shall be prepared by the Vendor at the expense of the Purchaser, and shall be executed by the Purchaser immediately after the execution by the Vendor of the conveyance of the premises to the Purchaser. All the documents of title which but for such mortgage the Purchaser would be entitled to have delivered to him upon the completion of the purchase shall be retained by the Vendor as mortgagee, and the transaction shall be treated in all respects as if the Purchaser had duly paid the whole of the purchase-money to the Vendor upon the completion of the purchase, and the Vendor had immediately thereupon repaid the sum of £—— to the Purchaser, by way of loan upon such security as aforesaid.

AS WITNESS, &c.

## No. VI.

*AGREEMENT for the SALE to a WORKING MAN of a COTTAGE in a TOWN, the PURCHASE-MONEY to be paid by INSTALLMENTS spread over THIRTY years. SPECIAL PROVISIONS including a POWER for the VENDOR to REPURCHASE in certain Events.*

Parties.

AN AGREEMENT made the —— day of ——, 19——, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part.

WHEREBY IT IS AGREED as follows:—

Agreement to sell.

1. SUBJECT to the conditions herein contained, the Vendor agrees to sell, and the Purchaser agrees to purchase, ALL THAT cottage and premises known as No. —, — Street, in the parish of A——, in the county of N——, now in the possession of the Purchaser, and delineated on the plan hereto and thereon edged ——, and the inheritance thereof in fee simple, at the

price of £360, to be paid by 120 equal quarterly instalments of £3 each on the — day of —, the — day of —, the — day of —, and the — day of — in every year, the first payment to be made on the — day of — next, and the last payment on the — day of —, 19—.

Purchase-money to be paid by instalments.

2. On the — day of — in any year, after paying the quarterly instalment due on that day, the Purchaser may at his option pay to the Vendor the discount price mentioned in the table indorsed hereon according to the total amount of the sums already paid, whether by instalments or otherwise, and such discount price shall be accepted by the Vendor in full satisfaction of the balance of purchase-money then remaining unpaid.

Purchaser may pay instalments in advance at discount price.

3. In case any instalment is not paid on the day on which the same shall become payable, the same shall carry interest at the rate of £6 per cent. per annum from that date until payment, and if any instalment shall remain unpaid either in whole or in part for one year after the same shall become payable, the Vendor may, by notice in writing addressed to the Purchaser, determine the contract for purchase, and resume possession of the property agreed to be sold, and the Purchaser shall not be entitled to the repayment of any part of the instalments previously paid by him.

Power to Vendor to resume possession in case of Purchaser's default.

4. If the Purchaser shall desire to realise the property before all the instalments have been paid, he shall give to the Vendor the right of pre-emption thereof at a price not exceeding nineteen-twentieths of the sum for the time being representing the Purchaser's vested interest mentioned in the table aforesaid, according to the total amount of the sums already paid, whether by instalments or otherwise.

Vendor to have right of pre-emption.

5. If the Vendor shall elect not to purchase, or shall not, within fourteen days after the service of the offer on him, accept in writing the same, the Purchaser may sell his interest to any other person, being a working man (but to no other person), who will undertake to succeed him in the occupation of the premises subject to the terms of this Agreement.

If not exercised, Purchaser may sell to a working man.

6. The Purchaser shall at all times keep the premises, including all fixtures, in good and substantial repair.

Repair.

7. The Purchaser will not carry on any trade or business upon the premises or any part thereof, but will use the cottage and buildings erected thereon as a private dwelling-house only, and

Restrictions as to user.

will not permit the said cottage and buildings to be inhabited by more than one family or by any person other than a working man and his family, and will not use or occupy the same or any part thereof, nor permit the same or any part thereof to be used or occupied, so as in the opinion of the Vendor to damage or injuriously affect the adjoining property or create a nuisance.

Vendor's title.

8. THE Vendor's title shall not be called for or investigated, or on any ground objected to, but it shall be assumed that he is owner in fee simple of the property free from incumbrances.

Exception of minerals.

9. ALL mines, minerals, and mineral substances shall be excepted out of the conveyance, and the right, whether the surface or any adjoining hereditaments be let down or not, to work and get the same by underground workings only, and to carry them away when gotten, shall be reserved to the Vendor, he making reasonable compensation for all damage caused by the workings to the surface and any buildings for the time being thereon.

Conveyance.

10. THE conveyance to the Purchaser shall contain all necessary exceptions, reservations, and covenants which in the opinion of the Vendor may be requisite to give effect to the before-mentioned conditions.

No conveyance until all instalments paid.

11. THE Purchaser shall not be entitled to a conveyance until the whole of the purchase-money has been paid. Until conveyance the Purchaser shall not let or part with the possession of the said cottage and buildings except as provided by clauses 4 and 5 hereof.

Form of conveyance.

12. THE conveyance to the Purchaser shall be executed in duplicate at the expense, as regards the duplicate, of the Vendor. The Purchaser shall be entitled to have a conveyance in the form which has been produced to him prepared, executed, and delivered to him free of cost, except stamp duty (*f*) and a fee of £1 11s. 6d.

Bonus to Vendor on sale by Purchaser.

13. IF a sale is effected under clause 5 hereof the Purchaser shall pay to the Vendor £5 per cent. on the purchase-money paid by the person so purchasing from the Purchaser.

Definition of "working man."

14. THE expression "working man" used herein means and includes mechanics, artizans, labourers, and others working for

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(*f*) As the purchase-money is under £500 the conveyance should contain a declaration to the effect that it does not form part of another transaction so as to avoid the additional stamp duties imposed by the Fin. (1909-10) Act, 1910, s. 73.

wages, hawkers, costermongers, persons not working for wages but working at some trade or handicraft without employing others except members of their own families, and persons other than domestic servants whose income does not exceed an average of 30s. a week, and the families of any such persons who may be residing with them.

15. In case of doubt whether any person is a working man within the meaning of these presents, the decision of the Vendor shall be final and conclusive.

16. If the purchaser shall fail to comply with clauses 6, 7, or 11 hereof, the Vendor may pay to the Purchaser the sum for the time being representing the Purchaser's vested interest mentioned in the table aforesaid according to the amount of the sums already paid, whether by instalments or otherwise, less such a sum as shall in the opinion of the Vendor's surveyor be requisite to make good all defects and wants of repair in and about the said cottage and buildings, and thereupon the contract for purchase shall determine, and the Purchaser shall on demand give up possession of the said cottage and buildings to the Vendor. The option given to the Vendor by this clause shall not prejudice any right of action or other remedy of the Vendor in respect of any breach by the Purchaser of any provision of this Agreement.

Vendor to be at liberty to repurchase in certain events.

17. THE expressions "the Vendor" and "the Purchaser" include the persons respectively deriving title under them where the context so admits.

Definitions.

18. THE provisions of section sixty-seven of the Conveyancing and Law of Property Act, 1881, shall apply to notices to be served hereunder.

Notices.

19. THE Vendor shall forthwith furnish the Commissioners of Inland Revenue with all necessary particulars to enable this Agreement to be stamped for the purposes of increment value duty (if any), and the Vendor shall either pay the same (if any) or give such security for the payment thereof as the Commissioners shall require (g).

Increment value duty.

AS WITNESS, &c.

(Add table on next page.)

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(g) See note to clause 9 of *Proc. IV.*, p. 214, *sup.*

TABLE ABOVE REFERRED TO.

| Date.       | Total amount<br>already paid<br>up to and<br>including this<br>date. | Discount price<br>which will be<br>accepted in<br>satisfaction of<br>balance of<br>purchase-money<br>on this date. | Sum representing<br>the Purchaser's<br>vested interest<br>on this date. |
|-------------|--|--|---|
|             |  | £  | £   |
| 19 .....    | 0  | 195  | 0   |
| .. 19 ..... | 12   | 190  | 5   |
| .. 19 ..... | 24   | 185  | 10  |
| .. 19 ..... | 36   | 180  | 15  |
| .. 19 ..... | 48   | 175  | 20  |
| .. 19 ..... | 60   | 170  | 25  |
| .. 19 ..... | 72   | 165  | 30  |
| .. 19 ..... | 84   | 159  | 36  |
| .. 19 ..... | 96   | 153  | 42  |
| .. 19 ..... | 108  | 147  | 48  |
| .. 19 ..... | 120  | 141  | 54  |
| .. 19 ..... | 132  | 135  | 60  |
| .. 19 ..... | 144  | 129  | 66  |
| .. 19 ..... | 156  | 123  | 72  |
| .. 19 ..... | 168  | 117  | 78  |
| .. 19 ..... | 180  | 111  | 84  |
| .. 19 ..... | 192  | 105  | 90  |
| .. 19 ..... | 204  | 99   | 96  |
| .. 19 ..... | 216  | 93   | 102   |
| .. 19 ..... | 228  | 87   | 108   |
| .. 19 ..... | 240  | 81   | 114   |
| .. 19 ..... | 252  | 75   | 120   |
| .. 19 ..... | 264  | 68   | 127   |
| .. 19 ..... | 276  | 61   | 134   |
| .. 19 ..... | 288  | 54   | 141   |
| .. 19 ..... | 300  | 46   | 149   |
| .. 19 ..... | 312  | 38   | 157   |
| .. 19 ..... | 324  | 30   | 165   |
| .. 19 ..... | 336  | 21   | 174   |
| .. 19 ..... | 348  | 12   | 183   |
| .. 19 ..... | 360  | ..   | 195   |

NOTE.—In this table it is supposed that the present value of the property is £195, which is to be paid with interest, by equal instalments of principal and interest combined, spread over thirty years, and the annual sum required for this purpose is supposed to be £12, interest being calculated at 4 per cent. or thereabouts. £360 is the total amount of the annual payments.

## No. VII.

AGREEMENT for the SALE of a LEASEHOLD SHOP and  
the STOCK-IN-TRADE and GOODWILL of the BUSINESS  
carried on upon the Premises.

AN AGREEMENT made the — day of —, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part and C. D., of, &c. (hereinafter called the Purchaser), of the other part.

1. THE Vendor agrees to sell, and the Purchaser agrees to purchase, the leasehold messuage and shop, being No. —, — Street, in the town of —, held under an Indenture of Lease, dated the — day of —, for the residue of a term of — years from the — day of —, and the term and interest granted by the said Lease subject to the yearly rent of £— thereby reserved, and to the lessee's covenants and the conditions therein contained, but free from incumbrances, and also the goodwill (*h*) of the business of a — now carried on by the Vendor on the premises for the price of £—, exclusive of the value of the tenant's fixtures. The Purchaser is satisfied with the title of the Vendor to the said leasehold premises and goodwill and hereby agrees to accept the same (*i*).

(*h*) See also Forms Nos. 9 and 10, "Special Conditions," pp. 146—147, *sup*. Goodwill.

After the sale of the goodwill of a business a vendor may, in the absence of agreement to the contrary, carry on a similar business in the same place, and solicit custom in a public manner, but he must not apply to any of the old customers privately by letter, or by a traveller ask them to deal with him: *Trego v. Hunt*, 1896, A. C. 7; 65 L. J. Ch. 1; *Jennings v. J.*, 1898, 1 Ch. 378; 67 L. J. Ch. 190; *Re David and Matthews*, 1899, 1 Ch. 378; 68 L. J. Ch. 185; *Gillingham v. Biddow*, 1900, 2 Ch. 242; 69 L. J. Ch. 527; *Carl Brothers, Ltd. v. Webster*, 1904, 1 Ch. 685; 73 L. J. Ch. 540; *Pomeroy v. Scalé* (1906), 22 T. L. R. 795; and see *Fine Cotton Spinners, &c. v. Haywood*, 1907, 2 Ch. 185; 76 L. J. Ch. 670; though he will not be restrained from dealing with them: *Leggott v. Barrett* (1880), 15 Ch. D. 306; 51 L. J. Ch. 90. It follows that on a sale of a goodwill the vendor should, if it is so intended, expressly covenant not to carry on a similar business within a certain distance, as provided in the above Precedent. If, on the other hand, it is intended that he shall have this liberty, it is desirable, in order to prevent misunderstanding, to explain this in the contract. As to the application of the rule to a compulsory sale, see *Walker v. Mottram* (1881), 19 Ch. D. 355; 51 L. J. Ch. 108.

As to stamp duty where the goodwill is sold apart from the property, see *West London Syndicate v. I. R. Comnrs.*, 1898, 2 Q. B. 507; 67 L. J. Q. B. 956; Highmore, 2nd ed., 121.

(*i*) This assumes that the purchaser has inspected the leasehold title and investigated the books of the business before the contract is signed.

Agreement for sale and purchase of leasehold premises and goodwill for a fixed sum,

Whether vendor of goodwill can carry on similar business in neighbourhood.

and tenant's  
fixtures and  
book debts at  
a valuation,

and in con-  
sideration of  
Purchaser  
undertaking  
debts and  
liabilities.

Deposit and  
payment of  
balance of  
purchase-  
money.

[Purchase-  
money to be  
paid by  
instalments.]

Vendor to  
assign on  
completion,

and to cove-  
nant not to  
carry on a  
similar  
business.

2. THE Vendor also agrees to sell, and the Purchaser agrees to purchase, the tenant's fixtures in and about the premises, and the book and other debts, which on the — day of — next (*the day fixed for completion*) shall be due and owing to the Vendor in respect of the said business, and the benefit of all contracts and engagements entered into with him in respect of the said business, and which shall be then subsisting, in consideration of the Purchaser taking upon himself all the debts and liabilities incurred by the Vendor in respect of the said business and which shall be then subsisting, and of his paying to the Vendor such a sum of money as shall be ascertained by valuation to be the difference between the value of the fixtures and things by this clause agreed to be sold and the amount of the said debts and liabilities. If the amount of the said debts and liabilities shall exceed the value of the said fixtures and things the excess shall be deducted from the said price of £—.

3. THE Purchaser shall, immediately after the signing of this Agreement, pay to the Vendor the sum of £— by way of deposit. The balance of the purchase-money, including the amount of the aforesaid valuation, shall be paid on the — day of — next, at the office of, &c., and if not paid on that day shall bear interest at the rate of £— per cent. per annum computed from that day until the actual payment thereof, [*or, if the purchase-money is to be paid by instalments*, The balance of the purchase-money, including the amount of the aforesaid valuation, shall be paid by — equal yearly instalments, the first thereof to be paid on the said — day of — next, and the remaining instalments to be paid on every — day of — until the whole shall be paid. The instalments of purchase-money for the time being remaining unpaid shall bear interest at the rate of £— per cent. per annum, computed from the — day of — next, which interest shall be paid at the same times as the instalments].

4. (1) UPON payment of the balance of the said purchase-money [*or of the instalment of purchase-money hereby made payable on the — day of —*], the Vendor shall execute to the Purchaser a proper assignment of the premises, such assignment to be prepared by and at the expense of the Purchaser, and the Vendor shall, in such assignment, covenant with the Purchaser not to carry on a similar business in the said town of —, or within a distance of — miles therefrom

[or and the Vendor shall in and by such assignment covenant with the Purchaser to use his best endeavours to secure to the Purchaser the full advantage of the connexion and custom of the Vendor in the said business, but so that he shall not be required to incur any expense in so doing. AND ALSO that he will not at any time [or during a term of — years from the date hereof], either alone or jointly, or in partnership with or as agent or manager for any other person or persons, and either directly or indirectly, carry on or be concerned or interested in, or assist any other person or persons to carry on or be concerned or obtain any interest in, the business of a — (k) in the said town of —, or within — miles therefrom (l)]. And the Purchaser shall in such assignment covenant with the Vendor to pay all the debts and liabilities hereby agreed to be taken over by the Purchaser and to indemnify the Vendor therefrom.

*Add provisions as to stamping in respect of increment value duty,* Increment value duty.  
*clause 8 (2) of Precedent I., p. 235, sup.*

[5. CONCURRENTLY with the execution of the said assignment, the Purchaser, and two sureties to be approved of by the Vendor, shall execute to the Vendor their joint and several covenant for the payment of the remaining instalments of the said purchase-money, and the interest thereon at the times and in the manner above provided; and the Purchaser shall also mortgage the said leasehold premises, including the tenant's fixtures and the goodwill of the said business, to the Vendor, for further securing the payment of the said instalments and interest, the mortgage to be prepared by the Vendor at the expense of the

[Purchaser to secure unpaid instalments of purchase-money by mortgage.]

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(k) Covenants of this kind should be restricted as to the nature of the business and the locality. If not, they may be held void as against public policy, see *Baker v. Hedgcock* (1888), 39 Ch. D. 520; 57 L. J. Ch. 889; *Perls v. Saulfeld*, 1892, 2 Ch. 149; 61 L. J. Ch. 409; *Long & Co. v. Andrews*, 1909, 1 Ch. 763; 78 L. J. Ch. 80; *Morris v. Ryle* (1910), 54 Sol. J. 748.

(l) If there is any risk of the vendor's wife carrying on a similar business with her separate estate, she should be required to enter into a covenant not to do so, see *Smith v. Hancock*, 1891, 2 Ch. 377; 63 L. J. Ch. 477. See also as to the construction of the words "concerned or interested," *Glophir Diamond Co. v. Wood*, 1902, 1 Ch. 950; 71 L. J. Ch. 550; *Cory, Ltd. v. Harrison*, 1906, A. C. 274; 75 L. J. Ch. 714; and "not to practice," *Sewell v. Wright* (1906), 50 Sol. J. 223.

Purchaser, and to contain a subdemise of the said term and such powers and provisions generally as the Vendor may reasonably require.]

Vendor to remain in possession and proprietor of business until day fixed for completion.

6. THE Vendor shall remain in possession of the premises and pay the rent and outgoings payable in respect thereof up to the said — day of — next, and such rent and outgoings shall, if necessary, be apportioned for the purpose of this clause. The Vendor shall during the same period remain the proprietor of the said business, but the Purchaser shall act as his manager, and shall receive the weekly sum of £— by way of salary as such manager.

Agreement to sell stock-in-trade.

7. THE Vendor also agrees to sell, and the Purchaser agrees to purchase, all the stock-in-trade (*m*) consisting of goods and chattels capable of passing by delivery, which on the said — day of — next shall belong to the Vendor in respect of the said business, at a sum to be ascertained by valuation to be the value thereof. The purchase-money for the said stock-in-trade shall be paid on the said — day of — next, and if not paid on that day shall bear interest at the rate of £— per cent. per annum from that day until the actual payment thereof.

Valuation (*n*).

8. EVERY valuation for the purpose of this Agreement shall be made by L. M., of, &c., who is appointed for this purpose by the Vendor, and N. O., of, &c., who is appointed for this purpose by the Purchaser, or in case the said valuers shall disagree, then by P. Q., of, &c., who has been appointed umpire by the valuers. If either of the valuers shall die before the valuation is completed or shall refuse to act, another valuer shall be appointed in his place by the party by whom the deceased or refusing valuer was appointed; and if the umpire shall die before the valuation is completed, or shall refuse to act, the valuers shall appoint another umpire.

As witness, &c.

Sale of stock-in-trade.

(*m*) The stock-in-trade should be valued and sold separately in order to avoid the payment of stamp duty. On completion, they should be delivered to the purchaser, and the vendor should give him a receipt for the purchase-money. See ss. 41—43 of the Sale of Goods Act, 1893, as to a vendor's lien in respect of goods which have not been paid for.

(*n*) In estimating values for the purposes of the duties on land values goodwill is to be taken into account: Fin. (1909-10) Act, 1910, s. 25 (4) (e).

No. VIII.

AGREEMENT *for the SALE of LAND subject to the APPROVAL of the COURT (o).*

AN AGREEMENT, &c. (*date and parties as in Precedent I.*).  
*This Precedent will follow Precedent I. and the following clauses will be added at the end :—*

(1) THE Vendor shall at his own expense forthwith take and carry to completion all necessary steps and proceedings, and use his best endeavours to obtain by means of an application to the Court its approval of this Agreement.

Vendor to take steps to obtain approval of this Agreement by the Court.

(2) THIS Agreement shall, notwithstanding anything to the contrary hereinbefore contained, be void unless the Vendor shall at his own expense, within —— calendar months from the date hereof, obtain the approval of the same by the Court either in its general form and terms, or with such variations as shall within the like time be assented to by the Vendor and Purchaser.

Agreement to be void unless approval of Court obtained within a given time.

AS WITNESS, &c.

No. IX.

AGREEMENT *for the SALE of a LIFE ESTATE in LAND (p).*

AN AGREEMENT, &c. (*date and parties as in Precedent I.*).

1. THE Vendor agrees to sell, and the Purchaser agrees to purchase, ALL THAT the estate for life, without impeachment of waste, of the Vendor in All, &c. (*parcels*), at the price of £——.

Agreement to sell and purchase.

(*p*) This Precedent is not applicable where there is an order for sale and a reference to one of the conveyancing counsel of the Court (see General Conditions, Prec. II., p. 220, *sup.*), but only where the vendor has power to sell with the consent of the Court, *e.g.*, under S. L. Act, 1884, s. 7, or S. L. Act, 1890, s. 10; or where there is an administration action but no absolute order for sale has been made, or where a sale by auction under the Court has failed.

Sale with leave of Court.

(*p*) A tenant for life cannot divest himself of the powers conferred on him by the S. L. Acts: S. L. Act, 1882, s. 50: *Re Mundy and Roper*, 1899, 1 Ch. 275; 68 L. J. Ch. 135; *Re Lord Wimborne and Browne*, 1901, 1 Ch. 537; 73 L. J. Ch. 270; and see *Re Dickin*, 1908, 1 Ch. 213; 77 L. J. Ch. 177; but he may by assignment for value prevent himself from exercising the powers so as to prejudice the assignee: Wolst. Conv. Acts, 9th ed., 407. It is not clear whether the powers of charging conferred by s. 39 of the Fin. (1909-10) Act, 1910, on a tenant for life for recoupment of increment value duty and reversion duty will pass to the assignee of his life estate.

Effect on statutory powers of sale of life estate.

*Other conditions as in Precedent I., so far as applicable, adding the following :—*

Agreement  
not to be  
rendered void  
by death of  
Vendor.

This Agreement shall not be rendered void, or be otherwise affected by the death of the Vendor before the said — day of — next (*date of completion*).

AS WITNESS, &c.

[*Add schedule of property.*]

## No. X.

### AGREEMENT *for the SALE of an ESTATE in REMAINDER in FREEHOLDS.*

Parties.

AN AGREEMENT made the — day of —, BETWEEN C. D., of, &c. (hereinafter called the Vendor), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part.

Agreement  
to sell and  
purchase.

1. THE Vendor agrees to sell, and the Purchaser agrees to purchase, ALL THAT the remainder in fee simple expectant on the life estate of A. B., of, &c., now aged — years or thereabouts, under an Indenture of Settlement, dated, &c., and made, &c. (*date and parties*), in the hereditaments described in the Schedule hereto, subject to [*or, free from*] the duty or duties (if any) which will become payable in respect thereof on the death of the said A. B. (*q*), at the price of £—.

Estate and  
succession  
duties payable  
on death of  
tenant for life.

(*q*) On the death of the tenant for life the purchaser will have to pay estate duty under the Fin. Act, 1894, as amended by the Fin. (1909-10) Act, 1910. Under the Fin. (1909-10) Act, 1910, s. 58 (2), succession duty will also be payable whether the remainderman is a lineal descendant of the tenant for life or not, unless the case comes within one of the exemptions mentioned in that section.

Duties payable  
if purchaser  
dies before  
tenant for life.

If the purchaser dies before the tenant for life, his real representative will be liable to pay estate duty as on property in expectancy passing on the death of the purchaser; but the payment may be postponed until the death of the tenant for life; and the rate of duty will be ascertained by aggregating the property passing on the death of the purchaser, and not the property passing on the death of the tenant for life: Fin. Act, 1894, s. 7 (6), (10). The heir or devisee, or the real representative on his behalf, will have to pay succession duty as on a succession derived from the purchaser.

Having regard to the uncertainty as to the rate, and therefore as to the amount of the duty which will be payable, a purchaser will sometimes decline to purchase subject to it, and will insist on the vendor either commuting it or indemnifying him against it.

It should be borne in mind that the tenant for life will be able to

2. THE purchase shall be completed on the — day of — next at the office of Messrs. —, at —, the Vendor's solicitors, and if from any cause whatever the purchase is not completed on that day the Purchaser shall pay interest on the said purchase-money at the rate of £— per cent. per annum, from that day until the completion of the purchase.

Completion of purchase.

*Insert general conditions and special conditions, if required, as in Precedent I., p. 231, sup.*

[3. (*To be inserted if the death duties are to be commuted or indemnified against by the Vendor.*) THE Vendor shall forthwith apply to the Commissioners of Inland Revenue to commute the duty or duties which will become payable in respect of the said hereditaments on the death of the said A. B. to the intent that the said hereditaments may be conveyed to the Purchaser free from the same; and if the said Commissioners shall refuse to commute the said duty or duties, or if the terms of commutation required by them shall be such as the Vendor will not agree to, then and in such case the Vendor shall in the conveyance of the said hereditaments covenant with the Purchaser to pay the said duty or duties when the same shall become payable and to indemnify the Purchaser and the said hereditaments against the same. And the Vendor shall also in that case allow the sum of £—, part of the purchase-money, to be set apart in the names of two trustees, one to be nominated by the Vendor and the other by the Purchaser, to be held by them as an indemnity fund for securing the performance of the Vendor's covenant, and, subject thereto, in trust for the Vendor, the said indemnity fund in the meantime to be invested in or upon any investments authorised by law for the investment of trust money and the income thereof to be paid to the Vendor.]

Vendor to commute death duties,

or to indemnify Purchaser against same.

4. THE documents of title relating to the premises are in the custody of the said A. B. as tenant for life, and on his death such of the said documents (other than the said settlement and any appointments of new trustees thereof) as relate exclusively to the premises shall be delivered to the Purchaser, and such of them as relate also to other property of the Vendor shall be retained by

As to deeds in possession of tenant for life

sell the property under the S. L. Acts without the consent of the purchaser: *Wheeler v. Walker* (1883), 23 Ch. D. 752; 52 L. J. Ch. 274; Wolst. Conv. Acts, 9th ed., 363; hence, notice of the purchase should be given to the S. L. Act trustees, otherwise they may distribute the capital money among the wrong persons.

Notice to S. L. Act trustees.

him, and he shall give to the Purchaser the usual statutory acknowledgment and undertaking in respect of documents so retained, including the said settlement and appointments of new trustees.

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

## NO. XI.

### AGREEMENT *for Sale of Freeholds subject to PERPETUAL YEARLY RENT-CHARGES.*

Parties.

AN AGREEMENT made the — day of —, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part.

Agreement to sell and purchase.

WHEREBY IT IS AGREED as follows :—

1. THE Vendor shall sell, and the Purchaser shall purchase, at the price of £ —, ALL the hereditaments situated in the Parish of —, in the County of —, and more particularly described in the Schedule hereto and the fee simple thereof in possession, subject to a perpetual yearly rent-charge of £ — created by an Indenture dated the — day of — [*or if there are several rent-charges*, more particularly described in the fourth column of the Schedule hereto, and the fee simple thereof in possession, subject to the respective perpetual yearly rent-charges mentioned in the third column of the said Schedule created by the Indentures, the dates and parties whereof are mentioned in the first and second columns of the said Schedule] and to the covenants and conditions contained in the same Indenture[s] as to buildings and otherwise, but in other respects free from incumbrances.

*The remainder of this Precedent will follow Precedent I., p. 231, sup., with the addition of the following clauses :—*

Receipt for last payment of rent.

(1) The receipt[s] for the last payment[s] of the said rent[s] which shall have become due before the completion of the purchase shall be accepted by the Purchaser as conclusive evidence of the performance of the covenants and conditions contained in the said Indenture[s] of Grant up to the completion of the purchase (*r*), and the Vendor shall not be required to deduce the title to the said rent[s] or show that the person

[or persons] giving such receipt[s] is [are] the present owner[s] thereof, and the said Indenture[s] or copies thereof having been produced to the Purchaser before the execution hereof, he shall be deemed to have notice of all the contents thereof and shall not take any objection or make any requisition in respect thereof.

(2) The conveyance shall contain a covenant by the Purchaser to indemnify the Vendor and his estate and effects against the said rent[s] and against any breach of the covenants and conditions contained in the said Indenture[s].

Covenant for indemnity.

As witness, &c.

THE SCHEDULE ABOVE REFERRED TO.

Particulars of the hereditaments hereby agreed to be sold (s) [and of the aforesaid rent-charges and the Indentures creating the same].

| Date of grant. | Parties to deed of grant. | Yearly rent-charge. | Property hereby agreed to be sold. |
|----------------|---------------------------|---------------------|------------------------------------|
|                |                           |                     |                                    |

No. XII.

AGREEMENT *for* SALE *of* PERPETUAL YEARLY RENT-CHARGES *charged on* FREEHOLDS (t).

AN AGREEMENT, &c. (*as in last Precedent*).

Parties.

WHEREBY IT IS AGREED as follows:—

1. THE Vendor shall sell, and the Purchaser shall purchase, at the price of £—, ALL AND SINGULAR the perpetual yearly rent-charges mentioned in the Schedule (u) hereto, and secured

Agreement to sell and purchase.

(s) If there is only one rent-charge the schedule will contain merely a description of the property.

(t) Prec. I., p. 231, *sup.*, applies to freeholds subject to long leases known as freehold ground rents, and Prec. XI. to freeholds subject to perpetual rent-charges. This Precedent (XII.) applies where land has been conveyed to uses giving the vendor a rent and subject thereto to the use of a purchaser in fee and the rent is being sold.

(u) For form of schedule, see last Precedent; the last column should be headed “Property Charged.”

on the hereditaments mentioned in that Schedule, Together with all powers and remedies for securing and compelling payment of the same conferred by law or by the several Indentures of Grant mentioned in the said Schedule so far as the said powers and remedies are valid or capable of being enforced.

*The remainder of this Precedent will follow Precedent I., p. 231, sup., with the following additions :—*

(1) No objection shall be taken on the ground that any of the powers and remedies expressed to be conferred by the said Indentures of Grant or any of them are invalid (c).

(2) The Purchaser shall be furnished with a list of the names and addresses of the persons from whom the respective rent-charges were last received, but shall not be entitled to any abstract or evidence of the title of those persons to the land on which the said rent-charges are charged.

AS WITNESS, &c. [*add schedule*].

No. XIII.

AGREEMENT for the SALE of an ADVOWSON (c).

Parties.

AN AGREEMENT made the —— day of ——, 19—, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part.

Agreement to sell and purchase.

WHEREBY IT IS AGREED as follows :—

1. The Vendor agrees to sell, and the Purchaser agrees to purchase, ALL THAT the advowson and perpetual right of

Restrictions on transfer of right of patronage.

(c) If the grants contain a power to re-enter and wholly dispossess the owner of the land on non-payment of the rents, &c., this may be void as being too remote.

(c) Since the passing of the Benefices Act, 1898, a transfer of a right of patronage of a benefice is invalid unless the following conditions be complied with, viz. : (1) It must be registered in the Diocesan Registry within one calendar month from its date or within such extended time as under special circumstances the bishop may allow : s. 1 (1) (a), and see s. 11 ; (2) It must transfer the whole interest of the transferor : s. 1 (1) (b), and

presentation of and to the Rectory and Parish Church of —, in the County of —, and the inheritance thereof in fee simple for

(3) More than twelve calendar months must have elapsed since the last institution: s. 1 (1) (c).

An advowson cannot be sold by auction save in conjunction with a manor or with an estate in land of not less than 100 acres situated in the same parish or in an adjoining parish or belonging to the same owner: s. 1 (2).

Sale by auction forbidden except in certain cases. Certain agreements affecting rights of patronage forbidden.

An agreement for any exercise of a right of patronage in favour or on the nomination of any particular person, or any agreement on the transfer of a right of patronage for the retransfer of the right or for postponing payment of any part of the purchase-money until a vacancy or for more than three months, or for the payment of interest until a vacancy or for more than three months, or for any payment in respect of the date at which a vacancy occurs, or for the resignation of a transferee in favour of any person, is invalid: s. 1 (3).

The expression "transfer" as above used includes any conveyance or assurance passing or creating any legal or equitable interest *inter vivos* and any agreement for any such conveyance or assurance, but not a transmission by operation of law or a transfer on the appointment of a new trustee where no beneficial interest passes: s. 1 (6). The Act does not prevent the reservation or limitation in a family settlement of a life interest to the settlor or in a mortgage the reservation of a right of redemption: s. 1 (7).

Definition of transfer.

A bishop may refuse to institute a presentee to a benefice if at the date of the vacancy not more than one year has elapsed since a transfer of the right of patronage, unless it be proved that the transfer was not effected in view of the probability of a vacancy within the year. He may also refuse to institute on other grounds set out in the Act: s. 2.

Grounds on which bishop may refuse to institute.

If the date of completion is fixed at a later period than one month, or if in fact the purchase is not completed within that time, the contract will require to be registered, being within the definition of a transfer in s. 1 (6).

Registration of contract, when necessary.

If the incumbent dies between the date of the contract and its completion, the vendor will be bound, on the purchaser accepting the title and paying the purchase-money, to present his nominee, there being nothing in the Act to alter the rule of equity in this respect. But the bishop may refuse to institute the presentee if the case falls within s. 2 (1).

Death of incumbent before completion.

The fee simple of a settled advowson can be sold by a tenant for life under the S. L. Acts, and it is conceived that he can by virtue of his estate also sell the presentations which may fall vacant during his life: Benefices Act, 1898, s. 1 (1) (b). On such a sale the purchaser should see that the settlement was not executed within twelve calendar months from the last institution or admission: *ib.*, s. 1 (1) (c). For the Benefices Rules, 1898 and 1899, see 1899, W. N., Part II., pp. 1, 79, and Current Index, lxix., lxxiii. See also, as to advowsons generally, Dart, 7th ed., 269, 271; R. P. Limitation Act, 1833, ss. 30–34; Pluralities Act, 1838; *Richard v. Graham*, 1910, 1 Ch. 722; 79 L. J. Ch. 378. As to estate duty on advowsons, see Fin. Act, 1894, s. 15 (4), as amended by Fin. (1909–10) Act, 1910; and Austen-Cartmell,

Sale of settled advowson.

the sum of £——, to be paid [as follows (that is to say), the sum of £——, part thereof, immediately after the signing of this Agreement, and the sum of £——, the balance thereof] on the —— day of ——, at the office of Messrs. ——, the Vendor's solicitors, at which time and place the purchase shall be completed.

Delivery of  
abstract and  
commence-  
ment of title.

2. THE Vendor shall, within —— days from the date of this Agreement, deliver to the Purchaser or his solicitor an abstract of title commencing with an Indenture dated the —— day of —— (being a conveyance on a sale, *or as the case may be*), since which time there have been —— presentations to the benefice. The Purchaser shall also be furnished with a list of the presentations, admissions, or institutions believed to have been made since the date fixed for the commencement of title, but the Vendor shall not be required to verify such list by statutory declaration or otherwise. [No objection shall be taken on the ground that the title shown does not cover three entire incumbencies.]

Requisitions.

3. THE Purchaser shall (*continue clause 3 of Precedent I., p. 233, sup.*).

Preparation of  
abstract and  
conveyance.

4. (1) The conveyance, &c. (*continue as in clause 8 of Precedent I., p. 235, sup.*).

*Add provisions as to documents, if required ; see Forms under Part I., Sect. VI., sup.*

Power for  
either party  
to rescind.

5. IF through the default or neglect of either party the purchase shall not be completed on the said —— day of ——, then the other party may, by notice in writing, rescind this Agreement, and in such case the defaulting or neglecting party shall pay to the other party the costs, charges, and expenses which shall have been incurred by him in relation to this Agreement.

Interest.

6. IF the purchase shall not be completed on the —— day of —— next, and if this Agreement shall not have been rescinded under the power for that purpose herein contained, the Purchaser shall pay interest on [the balance of] the purchase-money at the rate of £— per cent. per annum from the said ——

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4th ed., 151. As to the position where, by an act of union, two parishes have been consolidated, see *Lord Elcho v. Andrews*, 1910, 1 Ch. 706; 79 L. J. Ch. 586. The mortgagee of an advowson may be barred by *laches*: *Brooks v. Muckleston*, 1909, 2 Ch. 519; 79 L. J. Ch. 12.

day of — until the expiration of three calendar months from that date, or until the completion of the purchase, which first happens.

AS WITNESS, &c.

#### No. XIV.

AGREEMENT for SALE to a RAILWAY COMPANY where MINERALS are INCLUDED in the SALE (y); PURCHASE-MONEY to include COMPENSATION for SEVERANCE; COMPANY to MAKE *specified* ACCOMMODATION WORKS.

AN AGREEMENT made the — day of —, BETWEEN A. B., Parties.  
of, &c. (hereinafter called the Vendor), of the one part, and  
the — Railway Company (hereinafter called the Company  
[by two of their directors] (z) of the other part.

(y) The Lands C. C. Act, 1845 (which is incorporated with every special Act passed since the 8th May, 1845, authorising the taking of land for undertakings of a public nature, except so far as its provisions may be expressly varied by the special Act, and is also incorporated by express provision in numerous public Acts, *e.g.*, the Education Acts and the Public Health Acts), enables all persons seised, possessed, or entitled of or to any land authorised by the special Act to be taken to sell and convey the same to the promoters of the undertaking: ss. 6, 7.

L. C. C. Act enables land to be conveyed for public purposes.

The Act provides that in estimating the purchase-money or compensation to be paid by the promoters, regard is to be had not only to the value of the land taken, but also to the damage (if any) to be sustained by the owner by reason of the severing of the lands taken from his other lands, or otherwise injuriously affecting such other lands by the exercise of the statutory powers: s. 63. The words "injuriously affected" have been held to cover a depreciation of value of the vendor's other land by reason of the use to which the land taken is intended to be applied, *e.g.*, for sewage works: *Cowper-Essex v. Acton Local Board* (1889), 14 A. C. 153; 58 L. J. Q. B. 594. A claim to compensation is assignable: *Dawson v. G. N. and City Ry.*, 1905, 1 K. B. 260; 71 L. J. K. B. 190.

Compensation payable for severance or other damage where land taken.

Compensation may also be payable in cases where land is injuriously affected, but no part of it is actually taken; see *Browne & Theobald*, 3rd ed., 174 *et seq.*

Compensation for injury where no land taken.

(z) Under the Companies (Consolidation) Act, 1908, s. 76, any person acting under the express or implied authority of the company may execute the agreement on behalf of the company, instead of the company executing under their common seal.

Agreement  
to sell and  
purchase.

WHEREBY IT IS AGREED as follows:—

1. THE Vendor (*a*) agrees to sell, and the Company agrees to purchase, the pieces of land described in the first Schedule hereto, and the (*b*) mines and minerals (if any) thereunder, and the inheritance thereof in fee simple in possession free from incumbrances, for the sum of £——, such sum to be in full satisfaction and compensation for all damage to be sustained by the Vendor by reason of the severing of the said lands from his other lands or otherwise injuriously affecting such other lands by the exercise of the powers of the — Act, 19— (hereinafter called the special Act), or any Act incorporated therewith [and to be in full satisfaction also for all accommodation works, except as provided in clause 2 hereof (*c*)].

[Accommoda-  
tion works.]

[2. THE Company shall, as soon as conveniently can be, make and for ever maintain the several works mentioned in the second Schedule hereto for the accommodation of the adjoining lands of the Vendor and the owners and occupiers for the time being of the same (*c*).]

Completion of  
purchase.

3. THE purchase shall be completed on the — day of — next, at the office of Messrs. —, the Vendor's solicitors, and if from any cause other than the Vendor's wilful default the purchase shall not be completed on that day, the Company shall pay to the Vendor interest on the purchase-money at the rate of £4 per cent. per annum from that day until the completion of the purchase. The Company shall be entitled to possession on the said — day of —, all outgoings up to that time to be discharged by the Vendor.

Company, if  
let into posses-  
sion, to pay  
interest.

4. If the Vendor shall let the Company into possession before the said — day of —, the Company shall pay interest on

Sale under  
Settled Land  
Acts desirable.

(*a*) Where the vendor is a limited owner, it is better, as a general rule, that he should sell under the S. L. Acts (see Form No. 115, Spec. Condit., *sup.*, which should then be used) than under the special power conferred by s. 7 of the L. C. C. Act, 1845, because by so doing he avoids the necessity of having a valuation under s. 9 and of paying the money into Court under s. 69.

Minerals.

(*b*) If it is intended that the purchase shall include the minerals, they must be expressly mentioned: Railways C. C. Act, 1845, s. 77. If they are to be excepted, see next Precedent.

Accommoda-  
tion works.

(*c*) In many cases it is unnecessary to make any special stipulation as to accommodation works, the rights of the vendor in this respect being sufficiently protected by R. C. C. Act, 1845, s. 68; and see Browne & Theobald, 3rd ed., 278 *et seq.*; also cases on accommodation works collected *ib.* 256–259; *Abrey v. S. E. Ry. Co.*, Times Newsp., 17th February, 1910; 54 Sol. J. 519.

the said purchase-money at the rate aforesaid from the day when they shall be so let into possession.

5. THE Vendor shall, on or before the — day of —, deliver to the Company, or their solicitor, an abstract of title to the said lands, commencing at such period (not previous to the statutory period) as the Company shall require.

Delivery of abstract.

6. UPON payment of the purchase-money at the time and place aforesaid the Vendor shall execute to the Company a proper conveyance of the said lands [such assurance to contain proper covenants and provisions for the making and maintaining by the Company of the accommodation works mentioned in the second Schedule hereto, and a counterpart of such conveyance, duly executed by the Company, shall be retained by the Vendor].

Vendor to execute assurance.

*Add provisions as to stamping in respect of increment value duty, Precedent I., clause 8 (2), p. 235, sup.*

[6A. THE conveyance shall contain a release by the Vendor of his right of pre-emption under section one hundred and twenty-eight of the Lands Clauses Consolidation Act, 1845, in the event of the said lands or any part thereof being hereafter sold as superfluous land(d).]

[Vendor to release right of pre-emption.]

7. THE Company shall pay all such costs, charges, and expenses as by section eighty-two of the Lands Clauses Consolidation

Costs (c).

(d) The clause in brackets should not be inserted unless stipulated for by the railway company and agreed to by the vendor. The release will not affect the class of persons secondly mentioned in s. 128, viz., persons entitled to the adjoining lands, unless those lands are identical with the land from which the land sold was originally severed, and there seems no reason why the vendor should give up his right of pre-emption to let in others.

Release of right of pre-emption.

No right of pre-emption arises where land is situated in a town, or is built upon, or used for building purposes. As to what lands come within this exception, see Browne & Theobald, 3rd ed., 237.

(c) S. 82 of the L. C. C. Act throws the cost of deducing, evidencing, and verifying the vendor's title on the company, including steward's fees, &c., but not the lord's fine on admission: *Re Thames Tunnel Act*, 1908, 1 Ch. 193; 77 L. J. Ch. 330. But where the vendor dies before completion the company are not liable under the section to pay the costs of probate: *Re Elementary Education Acts*, 1909, 1 Ch. 55; 78 L. J. Ch. 281. It has been held that this section applies whether the purchase is under the compulsory powers of the Act, or the vendor is a limited owner selling under s. 7 or under the S. L. Acts, or an absolute owner in fee simple: *Re Burdick*, 1895, 2 Ch. 136; 64 L. J. Ch. 561. As it is doubtful whether the section extends to the costs of the agreement and the preliminary negotiation, it is prudent to provide expressly for them.

Costs under the L. C. C. Act.

The scale charges prescribed in Schedule I., Part I., of the General Order

Act, 1845, are directed to be borne by the promoters of the undertaking, and shall also pay the Vendor's costs and expenses incurred in or about the preparation and execution of this Agreement, and the negotiations preparatory hereto (including the charges of the Vendor's surveyor for his valuation of the premises, such charges not to exceed £——).

8. [*Title to be made if practicable without payment into Court: clause 8 of Precedent XVIII., p. 272, inf., substituting "Company" for "Council."*]

AS WITNESS, &c.

THE [FIRST] SCHEDULE ABOVE REFERRED TO.

ALL those pieces of land situated in the parish of —, in the County of —, containing — or thereabouts, and numbered — in the plans and books of reference of the intended railway, relating to the said parish of —, and deposited with the Clerk of the Peace for the said County, and which pieces of land are delineated and coloured pink on the plan annexed hereto, together with the mines and minerals (if any) thereunder.

[THE SECOND SCHEDULE ABOVE REFERRED TO.

(*Description of the accommodation works.*)]

## No. XV.

AGREEMENT for SALE to a RAILWAY COMPANY where MINERALS are EXCEPTED from the SALE; POWER to COMPANY to take POSSESSION before COMPLETION upon DEPOSITING PURCHASE-MONEY (f).

Parties.

AN AGREEMENT made, &c. (*date and parties as in last Precedent*).

Agreement to sell and purchase.

1. THE Vendor agrees to sell, and the Company agrees to purchase, the pieces of land described in the Schedule hereto, and

under the Solicitors' Remuneration Act, 1881, do not apply to sales under the L. C. C. Act, or any other public or private Act, under which the vendor's charges are paid by the purchaser: *Re Burdakin*, 1895, 2 Ch. 136; 64 L. J. Ch. 561.

Increment value duty.

Under s. 38 (3) of the Fin. (1909-10) Act, 1910, increment value duty payable by the transferor is not to be treated as part of the costs or expenses of a conveyance of land, and is not to be taken into account in assessing the compensation to be paid to him.

(f) See the notes to the last Precedent.

the inheritance thereof in fee simple in possession free from incumbrances at the price of £—— (g).

2. IN addition to the said purchase-money of £——, the Company shall pay to the Vendor the sum of £——, by way of compensation for all damage to be sustained by him by reason of the severing of the said lands from the other lands of the Vendor, and for all other damage or injury to be sustained by such other lands by reason of the formation of the intended railway and the execution of the works connected therewith. The Company shall be bound to make and maintain such works for the accommodation of the adjoining lands of the Vendor, and the owners and occupiers for the time being of the same, as in the absence of any agreement to the contrary they would be bound to make and maintain under the provisions of the Railways Clauses Consolidation Act, 1845.

Company to pay additional sum for severance.

Accommodation works (gg).

3. (*For completion of purchase, &c., as in last Precedent.*)

4. IF the Company shall be desirous of taking possession of the lands before the actual completion of the purchase, the Company shall be at liberty so to do, upon depositing the purchase-money in the bank of Messrs. —— at —— in the joint names of the Vendor and ——, and in such case the Company shall pay interest upon the purchase-money from the time of taking possession until the completion of the purchase at the rate of

Company may take possession on depositing purchase-money.

(g) As mines are not expressly mentioned, they will remain the property of the vendor under this agreement: R. C. C. Act, 1845, s. 77. In *Thompson v. Hickman*, 1907, 1 Ch. 550; 76 L. J. Ch. 254, it was decided that the presumption that, where a highway is a boundary, the sub-soil of the highway *ad medium filum viae* passes to the grantee of the land adjoining the highway does not apply to a railway which is a boundary. Hence, as s. 77 only excepts "minerals," a doubt may arise whether the adjoining owner has power to cut through sub-soil which does not contain minerals underlying a railway for the purpose of working minerals on the further side of the railway. However, having regard to the decision in *Batten Pool v. Kennedy*, 1907, 1 Ch. 256; 76 L. J. Ch. 162, it is conceived that the adjoining owner has such power. There it was held that an exception of "all mines and veins of coal" entitled the owner of the minerals to construct roads in the sub-soil. It may sometimes be desirable expressly to reserve the minerals and powers of working, including the right to make roads under the land conveyed to the company, whether for the purpose of working and carrying away the minerals under that land or under any other land belonging to the owner of the minerals, but the reservation would, it is conceived, be subject to the statutory powers of the company

Position of railway company in regard to minerals.

(gg) See note (c) to p. 264.

£— per cent. per annum, and the money so deposited shall remain in the bank at the risk of the Company, who shall be entitled to any interest allowed by the bank thereon.

(*Remaining clauses as in last Precedent.*)

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO (*h*).

## No. XVI.

### NOTICE to TREAT *by a RAILWAY COMPANY to a LAND-OWNER* (*i*).

To A. B., of, &c. (*Landowner*), and to every other person whom it may concern.

WE, the — RAILWAY COMPANY (*k*), do hereby, in pursuance of the direction in this behalf contained in the Lands Clauses Consolidation Act, 1845, give you NOTICE that by the — Railway Act, 19—, we are authorised to purchase and take for the purposes of the railway and works therein mentioned the lands and hereditaments described in the Schedule hereto, and

(*h*) See first schedule to last Precedent.

Notice to treat not a contract until price fixed by arbitration.

(*i*) L. C. C. Act, s. 18. A notice given under this s. cannot generally be withdrawn without the consent of the landowner (*Tarney v. Lynn and Ely Ry. Co.* (1847), 16 L. J. Ch. 282; *Browne & Theobald*, 3rd ed., 116), but it does not of itself constitute a contract. The notice must be clear: *Fisher v. G. W. Ry.*, 1910, 2 K. B. 252; 79 L. J. K. B. 870. When, however, a price has been fixed by arbitration or otherwise, a valid contract is established with all its incidents, including the liability of the company to pay interest on the purchase-money: *Haynes v. H.* (1861), 1 Drew & Sm. 426; 30 L. J. Ch. 578; *Re Battersea Park Acts* (1863), 32 Beav. 591; *Regent's Canal Co. v. Ware* (1857), 23 Beav. 575; 26 L. J. Ch. 566; *Re Pigott and G. W. Ry. Co.* (1887), 18 Ch. D. 146; 50 L. J. Ch. 678; *Re Cury-Elwes' Contract*, 1906, 2 Ch. 143; 75 L. J. Ch. 571.

Counter notice by landowner enables first notice to be withdrawn.

A counter notice by the landowner under s. 92 to take the whole of the land when part only is required by the company enables the company to withdraw the first notice, and thereupon the parties are in the same position as if no notice had been given. The company may therefore give a second notice, and, if this is validly withdrawn, a third one, and so on during the term limited for compulsory purchase: *R. v. L. & S. W. Ry. Co.* (1848), 12 Q. B. 775; 17 L. J. Q. B. 326; *Ashton Vale Iron Co. v. Bristol Corpn.*, 1901, 1 Ch. 591; 70 L. J. Ch. 230. As to the form of a counter notice, see *Pollard v. Middlesex C. C.* (1906), 95 L. T. 870.

(*k*) Sometimes the notice is given by the secretary of the railway company, under the Companies C. C. Act, 1845, s. 139.

that we require the same accordingly. And we DEMAND from you the particulars of your estate and interest in the said lands and hereditaments, and of the claims made by you in respect thereof. AND WE FURTHER GIVE YOU NOTICE that we are willing to treat for the purchase of the said lands and hereditaments, and as to the compensation to be paid to you and all other parties concerned by reason of the execution of the said railway and works.

Dated this — day of —, 19—.

(Common seal of Company.)

THE SCHEDULE ABOVE REFERRED TO (l).

(To contain particulars of the land.)

### No. XVII.

AGREEMENT *between a COMMITTEE of COMMONERS and a RAILWAY COMPANY for the EXTINCTION of RIGHTS of COMMON in respect of LAND PURCHASED by the COMPANY (m).*

AN AGREEMENT made the — day of —, 19—, BETWEEN A. B., of, &c., C. D., of, &c., E. F., of, &c., G. H., of, &c., and I. K., of, &c. (hereinafter called the Committee), of the one part, and the — Railway Company (hereinafter called the Company) of the other part. Parties.

WHEREAS the land described in the Schedule hereto is part of — Common, in the Parish of —, in the County of —, and also part of the Manor of —, and the same is required by the Company for the purposes of their railway : Recital that land part of a common is required.

AND WHEREAS the Committee and divers other persons are entitled to commonable and other rights over or in respect of the said land : As to parties entitled to common rights.

AND WHEREAS the Company have lately purchased from X. Y. (the lord of the manor) his right as owner of the soil of the said land, and he has accordingly conveyed the same to the Company by an Indenture dated the — day of — and made between, &c. : Purchase of land by Company from lord of manor.

(l) A form of claim is usually sent with the Notice to Treat. For a Precedent of the Form, see *Ency. Forms and Prec.*, vol. 8, p. 43.

(m) See L. C. C. Act, 1845, ss. 99—107, and the Light Railways Act, 1896, s. 21; see also *Salmon v. Edwards*, 1910, 1 Ch. 552; 79 L. J. Ch. 296.

Proceedings  
under Act to  
call meeting of  
commoners.

AND WHEREAS, pursuant to the provisions of the Lands Clauses Consolidation Act, 1845 (*n*), the Company, by advertisement inserted in the — newspaper, on the — day of —, and again in the same newspaper on the — day of —, duly called a meeting of the persons entitled to commonable or other rights over or in respect of the said land, to be held at —, on the — day of —, for the purpose of appointing a Committee to treat with the Company for the compensation to be paid for the extinction of such commonable or other rights, and the Company caused notice of such meeting more than seven days previous to the holding thereof to be affixed upon the door of the Parish Church of —, and also caused a like notice to be given to the said X. Y. :

Resolution at  
meeting  
appointing a  
Committee.

AND WHEREAS, in pursuance of the said advertisements and notices, a meeting was duly held at the time and place aforesaid, and there were present thereat the Committee and other persons entitled to such commonable or other rights as aforesaid, And at such meeting it was resolved by a majority (*o*) of the persons entitled as aforesaid and present at the said meeting, that the Committee should be and they were accordingly appointed to be a committee for the purpose aforesaid :

Agreement by  
Committee.

AND WHEREAS the Committee have accordingly agreed (*p*) with the Company to accept the sum of £—— for the extinction of the said commonable and other rights, and the said sum of £——

---

(*n*) See s. 102.

(*o*) The majority of the commoners present at the meeting can appoint the committee, which must not exceed five in number, and will bind all absent parties.

Extinction  
of rights of  
common under  
L. C. C. Act,  
1845.

(*p*) S. 101 provides that the committee may enter into an agreement with the promoters for the amount of compensation for the extinction of the rights of common and other rights on behalf of all the commoners, and may receive the compensation money. Until the compensation has been paid the promoters cannot enter upon the land: *Stonham v. L. B. & S. C. Ry.* (1871), L. R. 7 Q. B. 1; 41 L. J. Q. B. 1. The receipt of the committee or any three of them is an effectual discharge, and the promoters are not concerned to see to the application of the purchase-money which is distributable among the commoners according to their respective interests: *ib.* See also the Commonable Rights Compensation Act, 1882, as to the application of the money. Ss. 105, 106, and 107 provide the machinery where the compensation money cannot be agreed or a committee is not appointed, but the parties may make other arrangements: *Bee v. Stafford and Uttoxeter Ry.* (1875), 23 W. R. 868.

has accordingly been paid to them by the Company before the execution of these presents.

NOW THESE PRESENTS WITNESS that, in pursuance of the power for this purpose contained in the said Act, the Committee as such Committee as aforesaid hereby acknowledge the receipt from the Company of the said sum of £—, and hereby accept the same for and on behalf of themselves and all other persons having commonable and other rights over or in the land described in the Schedule hereto, as the full compensation payable for the extinction of all such commonable and other rights as aforesaid, and they agree that all such commonable and other rights shall henceforth be extinguished.

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO (*q*).

### No. XVIII.

#### AGREEMENT *for SALE to a COUNTY COUNCIL under a SPECIAL ACT.*

THE — COUNTY COUNCIL ( — ) ACT, 19—.  
— IMPROVEMENTS AT —.

Witnessing  
part.  
Acknowledg-  
ment by Com-  
mittee of  
receipt of  
compensation  
agreed on.

AN AGREEMENT FOR SALE AND PURCHASE of the under-mentioned property required for the purposes of the said Act made this — day of —, BETWEEN —, of — (hereinafter called the Vendor), of the one part, and the — County Council (hereinafter called the Council), by —, their valuer and agent, of the other part.

Parties.

1. THE estate and interest to be sold by the Vendor is Freehold [Leasehold for the residue of a term of — years from the — day of —, 19—, at a rent of £— per annum under a Lease dated, &c., and made between — as lessor and — as lessee], and is sold subject to the [Leases] [weekly tenancies] mentioned in the Schedule hereto.

Interest sold.

2. THE property to be sold consists of —, being No. — on that part of the deposited plans and book of reference referred to in the said Act which relates to the Parish of —,

Property.

---

(*q*) See first schedule to Precedent XV., p. 266, *sup*.

and being the property described in the Notice to Treat given by the Council under the said Act, and upon which notice the Vendor sent in a claim to the Council dated the — day of —.

Apportionment.

3. RENTS and profits and outgoings are to be received and paid by the Vendor to the day of completion of the purchase and by the Council from that day, and are to be apportioned if need be.

Compensation money.

4. THE purchase-money agreed on is the sum of £—— (—— pounds), or, in the event of a valuation by surveyors under the Lands Clauses Consolidation Act, 1845, proving necessary, such sum, not being less than the said sum of £——, as shall be determined by such valuation. [The said sum shall be accepted in discharge of all items of claim except ——.]

Fire insurance.

5. THE Council are (subject to the consent of the Insurance Office) from the date of this Agreement to take all benefit to be derived by the Vendor under any existing policy of insurance against fire, they repaying to the Vendor all premiums hereafter to become due, and which at their request may be paid by the Vendor.

Costs.

6. THE Council are to pay the Vendor's surveyor's costs amounting to £——, also the Vendor's costs of title and conveyance as allowed by the Lands Clauses Consolidation Act, 1845, under the provisions of which Act (but subject as hereinafter mentioned) this Agreement is entered into and is to be carried out, and £—— for solicitor's preliminary costs.

Completion.

7. THE purchase is to be completed at the office of the Council. *Add provisions as to stamping in respect of increment value duty, Precedent I., clause 8 (2), p. 235, sup.*

Title to be made, if practicable, without payment into Court.

8. PROVIDED ALWAYS, that if the Vendor shall upon the investigation of his title appear to the satisfaction of the Council to be competent to make title, whether as being absolutely entitled or under a trust for sale or under the Settled Land Acts, 1882 to 1890, or under Part I. of the Land Transfer Act, 1897, or otherwise than under the Lands Clauses Consolidation Act, 1845, then the Council may require that title be made in such a way as may render unnecessary the payment of the purchase-money into Court, but so that the costs of the appointment of trustees and any other additional costs involved by any such requisition shall be paid by the Council [but nothing herein contained shall prejudice the

right of the Vendor to apply for the payment to him of part of the compensation money under section seventy-three of the said Act of 1845 (*r*), or otherwise at the cost of the Council].

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

| No. on Deposited Plan. | Date of Lease or Tenancy. | Short particulars of Property demised. | Name of present Lessee. | Term. | Yearly Rent reserved by Lease. | Rent apportioned on Property taken. |
|------------------------|---------------------------|--|-------------------------|-------|--------------------------------|-------------------------------------|
|                        |                           |  |                         |       |                                |                                     |

No. XIX.

AGREEMENT for SALE of LAND to a MUNICIPAL CORPORATION, or an URBAN DISTRICT COUNCIL, purchasing under the PUBLIC HEALTH ACT, 1875, or other STATUTORY AUTHORITY (*s*).

AN AGREEMENT made the — day of —, 19—, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and the Mayor, Aldermen and Burgesses of —, in the County

Parties.

(*r*) See *Re Scott's Settlement*, Reg. Lib., 1899, S. No. 530; Wolst. Conv. Acts, 9th ed., 368, 369.

(*s*) The P. H. Act, 1875, s. 175, enables local authorities to purchase lands for various purposes authorised by the Act. S. 176 incorporates the L. C. C. Act, 1845, except s. 127, subject to a provision that before putting in force any of the powers with respect to the purchase and taking of land otherwise than by agreement, the local authority must apply for and obtain a provisional order of the Local Government Board (see Local Government Acts, 1888 and 1894) empowering them so to do, which order must be confirmed by Parliament: s. 297. The P. H. Act, 1907, s. 95, extends the powers of ss. 175 and 176 to highways.

Power of local authority to purchase land.

S. 175 of the Act of 1875 provides that any lands acquired by a local authority under the powers of the Act and not required for the purpose for which they were acquired shall be sold unless the Board otherwise direct. It has been held that the latter words do not enable the Board to make an order directing that land taken compulsorily for a particular purpose shall be used permanently for a different purpose authorised by the Act but objected to by the vendor: *A.-G. v. Hawordell U. D. C.*, 1900, 2 Ch. 377; 69 L. J. Ch. 626; followed in *A.-G. v. Pontypridd U. D. C.*, 1906, 2

Superfluous land to be sold, unless L. G. B. directs otherwise.

of —, acting by the Council of the said Borough as the Urban Sanitary Authority (hereinafter called the Corporation) [or the Urban District Council for —, in the County of — (hereinafter called the Council)], of the other part.

WHEREBY IT IS AGREED as follows:—

1. THE Vendor agrees to sell, and the Corporation [or the Council] agree to purchase, for the purposes authorised by section — of the Public Health Act, 1875 [or by (*state other statutory authority*)], ALL that piece of land situated in the Parish of —, in the County of —, containing — or thereabouts, which is delineated on the plan annexed hereto, and thereon coloured —, and the inheritance thereof in fee simple in possession, free from

Agreement  
to sell and  
purchase.

Whether  
surplus land  
may with  
sanction of  
L. G. B. be  
used for a  
different  
purpose.

Ch. 257; 75 L. J. Ch. 578; but the Education (Administrative Provisions) Act, 1909, s. 5, enables a county, borough, or urban district council acting as the local education authority to appropriate land, with the sanction of the Board of Education and the approval of the Local Government Board, for other than educational purposes. If, however, upon a sale to a local authority by agreement the conveyance expressly provides that any land not required for the original purpose may, with the sanction of the Board, be used for any other authorised purpose, there seems no reason why such a provision should be held ineffective. The vendor would be bound by his contract, and as regards the ratepayers, their interests are sufficiently safeguarded by the public inquiry always held in these cases. So, also, where there is no such express provision in the conveyance, it is conceived that the order might be made with the vendor's consent. The transaction in that case would be in effect, first, a resale by the local authority to the vendor; and, secondly, a repurchase by the local authority at the same price for the altered purpose.

Land not  
wanted at  
once may be  
used tempo-  
rarily for other  
purposes.

A local authority purchasing under statutory powers may covenant not to use the property for purposes other than those for which it was originally purchased: *Stourcliffe, &c. Co. v. Bournemouth Corp.*, 1910, 2 Ch. 12; 79 L. J. Ch. 455. Where part only of the land acquired is immediately, but the rest will ultimately be, required for the purpose for which it was taken, the local authority may in the meantime use it for some other lawful purpose, *e.g.*, a recreation ground: *A.-G. v. Teddington U. D. C.*, 1898, 1 Ch. 66; 67 L. J. Ch. 23; *A.-G. v. Pontypridd U. D. C.*, *sup.*

Cemeteries.

Among other purposes for which a local authority may purchase land under the P. H. Acts is that of providing a cemetery: P. H. (Interments) Act, 1879, which incorporates the Cemeteries Clauses Act, 1847; crematoria under the Cremation Act, 1902; open spaces under the Open Spaces Act, 1906; and museums and gymnasiums under the Museums and Gymnasiums Act, 1891. Burial grounds are, however, more commonly provided under the Burial Acts; see next Precedent. The Public Health Act, 1908, s. 1, extends the powers of district councils under the Act of 1875 to rural district councils.

incumbrances, at the price of £——, subject to the conditions hereinafter mentioned.

2. THE purchase is conditional on the Corporation [*or Council*] obtaining the sanction of the Local Government Board to the raising of the purchase-money by loan under the provisions of the said Act, and the Corporation [*Council*] shall forthwith apply to the Local Government Board for such sanction.

Purchase to be conditional on sanction of L. G. B. being obtained.

3. WITHIN fourteen days after the date of the Order of the Local Government Board sanctioning the loan, the Vendor shall deliver to the Corporation [*or Council*], or their solicitor, an abstract of his title to the premises, commencing with an Indenture dated the —— day of ——. [AND within fourteen days from the delivery of the abstract the Corporation [*or Council*] shall make and send to Messrs. ——, the Vendor's solicitors, their objections and requisitions (if any) in respect of the title or the abstract, and all objections and requisitions not sent within that time shall be deemed to be waived (*t*).]

Time for delivery of abstract,

and for sending in requisitions.

4. THE purchase shall be completed at the expiration of —— weeks from the date of such Order as aforesaid, and possession shall then be delivered, and a proper conveyance made to the Corporation [*Council*]. If from any cause the purchase shall not be completed at the time aforesaid, the Corporation [*or Council*] shall thenceforth pay to the Vendor interest on the purchase-money at the rate of £4 per cent. per annum until the actual completion of the purchase. *Provisions as to stamping in respect of increment value duty, Precedent I., clause 8 (2), p. 235, sup.*

Time for completion of purchase.

Interest if not completed at appointed time.

5. THE conveyance shall contain a provision to the effect that if any part of the said land shall not be required for the purpose aforesaid, the same may, by the direction or with the sanction of the Local Government Board, be used for any other purpose for which the Corporation [*or Council*] shall for the time being be authorised by statute to acquire land [save and except that no part of the said land shall be used as the site of a hospital for infectious diseases, or for any purposes or in any manner

Surplus land may be used for other authorised purposes (*u*).

(*t*) This clause within square brackets will be omitted if the purchasers have compulsory powers.

(*u*) This provision need not be inserted in the case of a purchase by a county, borough, or urban district council for educational purposes, as s. 5 of the Education (Administrative Provisions) Act, 1909, contains a similar provision.

which may be a nuisance or annoyance to the Vendor, his heirs or assigns, or the owner or owners of any land adjoining or near thereto, without his or their consent in writing].

6. If an order of the Local Government Board sanctioning the said loan shall not be made within — calendar months from the date hereof, or within such further time as the parties hereto may agree in writing, then and in such case either party may, by notice in writing to the other party, rescind this Agreement.

7. THE Corporation [*or Council*] shall pay all such costs, charges, and expenses as by section eighty-two of the Lands Clauses Consolidation Act, 1845, are directed to be borne by the promoters of the undertaking, and shall also pay the Vendor's costs and expenses incurred in or about the preparation and execution of this Agreement, whether the same is carried into effect or is rescinded under clause 6 hereof or otherwise.

IN WITNESS, &c. (*y*).

## No. XX.

### AGREEMENT *for Sale of Land to a Burial Board for a Cemetery* (*z*).

AN AGREEMENT made the — day of —, 19—, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part,

(*y*) This agreement must be under the corporate or common seal of the corporation or council.

(*z*) The Burial Act, 1852, s. 26 (extended by the Act of 1853), enables a burial board, with the approval of the vestry, to contract for the purchase of land for forming a cemetery or for making additions to a cemetery. And s. 20 of the same Act enables the board, with the sanction of the vestry and the approval of the Treasury (now the Local Gov. Board, see Local Authorities (Treasury Powers) Act, 1906), to borrow any money required for providing or laying out a cemetery, and building a chapel thereon, and to charge the future rates of the parish with the money so borrowed, and the Burial Act, 1857, ss. 19 to 21, contains provisions as to loans. In rural parishes the parish meeting may adopt the Burial Acts, and will in that case be substituted for the vestry: *L. G. Act, 1894, s. 7*; an urban district may by resolution vest in themselves the powers of a burial board: *ib.*, s. 62; so may a borough council: *Kirkdale Burial Board v. Liverpool Corp.*, 1904, 1 Ch. 829; 73 L. J. Ch. 529. If, at the time when the land is first appropriated for the cemetery, there is any completed dwelling-house within a distance of 100 yards from any part of the land, that part cannot be used for burials

Agreement to be void if sanction not obtained within six months.

Costs to be paid by District Council.

Parties.

Provisions of Burial Acts.

and the Burial Board for the Parish of —, in the County of — (hereinafter called the Burial Board), of the other part.

WHEREBY IT IS AGREED as follows:—

1. THE Vendor agrees to sell, and the Burial Board, under the powers of the Burial Acts, 1852 to 1906, agree to purchase, ALL THAT, &c., and the inheritance thereof in fee simple in possession free from incumbrances, at the price of £ —, subject to the conditions hereinafter contained. Agreement to sell.

2. THE purchase is conditional on the Burial Board obtaining the approval of the vestry of the said parish [and of the Local Government Board (a)] to the said purchase, and the sanction of the said vestry and the approval of the said Board to the raising of the purchase-money by loan, and the Burial Board shall forthwith take the proper steps to obtain such approvals and sanction as aforesaid. Purchase conditional on obtaining necessary consents.

3. THE Vendor will, on receiving notice from the Burial Board that the necessary sanction and approvals have been obtained, deliver to the Burial Board, or to their solicitor or clerk, an abstract of the Vendor's title to the land hereby agreed to be sold. Vendor to show title.

4. WITHIN — days after the delivery of the abstract the Burial Board shall, &c. (*send requisitions, &c., as in last Precedent, clause 3*). Requisitions.

5. THE purchase shall be completed on the — day of —, 19—, if the necessary sanction and approvals shall have been obtained as aforesaid, and the possession of the land shall then be delivered and a proper conveyance made to the Burial Board. If, &c. (*interest to be paid if not completed at appointed time, as in last Precedent, clause 4*). Time for completion.

without the consent in writing of the owner, lessee, and occupier of the house: Burial Act, 1855, s. 9, as amended by the Burial Act, 1906, s. 1.

The Public Health (Interments) Act, 1879, enables local authorities to provide cemeteries and acquire land for that purpose. The Burial Acts (except the Acts of 1900 and 1906) do not apply to cemeteries provided under the Public Health Acts. No part of a cemetery provided under these Acts can be constructed within 100 yards of a dwelling-house without the consent of the owner, lessee, and occupier: Cemeteries Clauses Act, 1847, s. 10; Burial Act, 1906, s. 2.

(a) The consent of the L. G. B. (substituted by the Act of 1900 for the Home Office) is required if the burial ground is within two miles of the metropolis: Act of 1852, s. 9.

Power to  
either party  
to rescind  
Agreement if  
not approved  
within certain  
time.

Costs.

6. If the necessary sanction and approvals are not obtained within ——— calendar months from the date hereof, or within such extended time as the parties may agree in writing, then and in such case either party may by notice in writing to the other party rescind this Agreement.

7. The Burial Board shall pay, &c. (*as in last Precedent, clause 7*).

As witness, &c.

No. XXI.

AGREEMENT *for BUILDING GRANT in fee in consideration of a PERPETUAL RENT-CHARGE (b).*

Parties.

AN AGREEMENT made the ——— day of ———, 19—, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part.

WHEREBY IT IS AGREED as follows:—

Upon archi-  
tect's certifi-  
cate that  
buildings are  
complete,  
Vendor to  
execute  
conveyance,  
to use that  
Vendor may  
take a per-  
petual rent,

1. So soon as the architect or surveyor for the time being of the Vendor (hereinafter called the Architect) shall have given his written certificate that the dwelling-houses hereinafter agreed to be built are completed and made fit for habitation to his satisfaction, the Vendor shall convey ALL THAT, &c. (*describing it*), To the uses following (that is to say), To the Use that the Vendor, his heirs and assigns [or a trustee nominated by him for that purpose, his heirs and assigns], may from the ——— day of ——— receive out of the premises a perpetual yearly rent-charge of £——, to be issuing out of and charged upon the same and payable half-yearly on the ——— day of ———, and the ——— day of ——— in every year, the first half-yearly payment to be made on the ——— day of ———; and subject to the said rent-charge and to the statutory and other powers for enforcing and compelling payment thereof To the Use of the Purchaser in fee simple.

and subject  
thereto to  
Purchaser in  
fee.

Purchaser may  
enter and  
proceed with  
works.

2. The Purchaser may, immediately after the execution of this Agreement, enter upon the said land and erect the buildings,

(b) See notes generally to Prec. XII., p. 259, *sup.*; also Wolst. Conv. Acts, 9th ed., 110–113.

and otherwise proceed with the works mentioned in this Agreement.

3. THE Purchaser shall, within one calendar month after obtaining possession of the said land, fence in the same with good and substantial stone walls [fences of —] on all the sides thereof; and shall, before the — day of —, 19—, at his expense and to the satisfaction of the Architect, build, cover in, and completely finish fit for habitation upon such part of the said land as is marked out for that purpose on the plan hereto, with good freestone [bricks and rough cast] and all proper materials of all sorts, and in a good, substantial, and workmanlike manner — (*give the number*) semi-detached villas or dwelling-houses, with proper offices and outbuildings, according to plans and elevations to be prepared by the Architect, and under his inspection.

Purchaser to fence in plot,

and complete houses.

4. EVERY division or boundary fence separating the said land from the adjoining plot or plots, shall (when made) be a party-wall or fence, and a proper proportion of the expense thereof shall be repaid by the grantees of the adjoining plot or plots, such proportion to be settled by the Architect.

Division-fences to be party walls.

5. THE Purchaser shall make all proper drains and sewers in such manner as shall be approved by the Architect.

Purchaser to make drains,

6. No flue or substitute for a flue shall be made in the said dwelling-houses, or in any office or building belonging thereto, except such as shall be carried into the chimney-stacks of the said dwelling-houses.

As to flues.

7. ALL stone, bricks, rough cast, timber and other materials, which shall have been brought upon the premises by the Purchaser for the purpose of erecting such buildings as aforesaid, shall be considered as immediately attached to and belonging to the premises, and shall not be removed without the consent in writing of the Vendor or his agent (*c*).

Materials.

8. IF the Purchaser shall at any time discontinue the works on the said land for one calendar month, or shall not complete the said dwelling-houses before the said — day of —, 19—, pursuant to the provisions hereof, then the Vendor or his agent may re-enter upon the said land and take possession thereof, and

If Purchaser make default in building, &c., Vendor may re-enter and sell.

(*c*) This clause does not render it necessary to register the agreement as a bill of sale: *Brown v. Bateman* (1867), 2 C. P. 272; 36 L. J. C. P. 134; *Reeves v. Barlow* (1884), 12 Q. B. D. 436; 53 L. J. Q. B. 192.

of all buildings and materials whatsoever which may be thereon, and determine this Agreement.

Purchaser  
to accept  
conveyance.

9. As soon as the Architect shall have given his written certificate that the dwelling-houses agreed to be built are completed and made fit for habitation to his satisfaction, the Purchaser shall accept a conveyance of the said land and the buildings erected thereon upon the terms hereof, and shall execute a duplicate or counterpart of the conveyance.

[If the Purchaser so requires arrangements shall be made at his expense for the execution of separate conveyances of each house at an apportioned rent-charge and so that every such apportionment shall be fixed by the Architect.] *Add provisions as to stamping in respect of increment value duty, Precedent I., clause 8 (2), p. 235, sup. (d).*

Conveyance to  
contain cove-  
nants by  
grantee to pay  
rent and taxes,  
to repair,

10. THE conveyance shall contain the following covenants by the Purchaser for himself and his assigns (that is to say):—

(1) To pay the yearly rent ;

(2) To repair and keep the said dwelling-houses and buildings, and the boundary walls and drains belonging thereto, in good and tenantable repair and condition ;

(3) To permit the Vendor, and the persons deriving title under him, and all persons authorised by him or them once in every year in the daytime, on giving to the tenant or occupier for the time being of the said dwelling-houses respectively at least one week's notice of his or their intention so to do, to enter the said dwelling-houses, buildings, and premises respectively and examine the condition thereof ;

to insure,

(4) At all times to insure and keep insured against loss or damage by fire the said dwelling-houses and buildings in the — Office, or some other public insurance office, in the sum of £—— at least [for each house], and on demand to produce to the Vendor, or the persons deriving title under him, the policy or policies of insurance, and the receipt for the premium for the current year payable in respect thereof, and, whenever any loss or damage by fire shall happen to the said dwelling-houses and buildings, or any part thereof, forthwith to expend

Increment  
value duty  
where con-  
sideration is  
a rent-charge.

(d) Under s. 32 (1) of the Fin. (1909-10) Act, 1910, the consideration for the purposes of increment value duty is the capital value of the rent-charge. Under the Increment Value Duty Rules, r. (16) (I), the duty is payable by five equal annual instalments.

the money received under such insurance as aforesaid, and also such other money as shall be necessary for the purpose, in rebuilding or reinstating the premises;

(5) Not to alter or permit to be altered the external plan or elevation of the said dwelling-houses and buildings respectively without the previous consent of the Vendor, or the persons deriving title under him;

not to alter elevation,

(6) Not at any time without such consent as aforesaid to carry on or permit to be carried on upon the premises any trade or business whatsoever, or to use or permit to be used the same for any other purpose than as private dwelling-houses or as the professional residence of a doctor, surgeon, solicitor, or surveyor;

not to carry on any trade or use premises except as private dwelling-houses, without Vendor's consent,

(7) Not without such consent to erect on the said land any messuage or building other than the dwelling-houses and buildings to be erected as aforesaid, except a stable or coach-house or motor shed or green-houses or conservatories in connexion with the said dwelling-houses respectively.

not to erect other buildings without grantor's consent.

11. THE conveyance shall also contain a proviso that in case any dwelling-house or buildings shall be destroyed or damaged by fire or shall fall into disrepair, and the Purchaser, or the persons deriving title under him, shall fail to rebuild or repair the same for three calendar months after a notice requiring him or them so to do shall have been given to him or them or left at or upon the premises, then and so often as the same shall happen, and notwithstanding the waiver of any previous default, the Vendor, or the persons deriving title under him, owner or owners for the time being of the said rent-charge, may at any time during the lives of the Vendor and Purchaser and the lives of the children and more remote issue of Her late Majesty Queen Victoria now living, or the lives or life of the survivors or survivor of them, or within twenty-one years after the death of such survivor, enter into and upon the premises, and execute and do such works, acts, and things as shall be necessary or proper for rebuilding or repairing the same, as the case may require, and may remain upon the premises and receive the rents and profits thereof, until all money expended in such rebuilding or repairs, and all costs and expenses incurred in or about the exercise of such power, shall thereby or otherwise be fully paid and satisfied.

Conveyance to contain powers for securing performance of covenants as to repairs, &c.

Conveyance, by whom and at whose cost to be prepared. 12. THE conveyance, and the counterpart thereof, shall be prepared by the Vendor's solicitors, at the cost of the Purchaser.

Vendor's title accepted. 13. THE Purchaser has examined the Vendor's title, and is satisfied therewith, and hereby accepts the same (*dd*).

Documents. 14. ALL documents of title relating to the property shall be retained by the Vendor, who shall in the conveyance give to the Purchaser a statutory acknowledgment of his right to production and delivery of copies thereof [and also an undertaking for the safe custody thereof (*e*)].

AS WITNESS, &c.

## NO. XXII.

### AGREEMENT *for* SALE *of* REVERSION *in* PERSONAL PROPERTY (*f*).

Parties. AN AGREEMENT made the — day of —, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and the X. Company, whose registered office is at — (hereinafter called the Company), by —, their agent, of the other part.

WHEREBY IT IS AGREED as follows:—

Agreement to sell. 1. THE Vendor agrees to sell, and the Company agree to purchase, at the price of £ — the reversion described in the schedule hereto, free from all death duties, and from all other incumbrances.

Completion. 2. THE purchase shall be completed and the purchase-money (*g*) paid at the aforesaid office of the Company [at the office of Messrs. —, the Vendor's solicitors] on the — day of —, and if from any cause whatever (other than wilful default on the part of the Vendor) the completion of the purchase is

(*dd*) If the title has not been accepted, then the agreement will follow Prec. I., p. 231, *sup.*, with the additions shown in the text.

(*e*) Apart from express provision it seems that the purchaser would be entitled to the documents: *Whitfield v. Faussett* (1749), 1 Ves. Sen. at p. 394. If the vendor is a trustee or mortgagee he will not, of course, give an undertaking for safe custody.

(*f*) See notes to Prec. IV. of General Conditions, p. 225, *sup.*

(*g*) The doctrine of vendor's lien for unpaid purchase-money extends to personal estate: *Re Stacey*, 1906, 1 Ch. 67; 75 L. J. Ch. 58.

delayed after the last-mentioned day, the purchase-money shall bear interest at the rate of £— per cent. per annum from that day to the day of the actual payment thereof.

3. THE Vendor shall within seven days after the date hereof deliver to the Company a full copy of the instrument under which the said reversion arises, and an abstract of the rest of his title to the said reversion (including any appointments of new trustees of the said instrument), [and as regards any fund in Court comprised in the reversion, a copy of the pay-office certificates of such fund].

Delivery of abstracts and copies.

4. THE Company shall within twenty-one days after the delivery of the said copy [copies] and abstract send (*continue as in clause 3 of Precedent I., p. 233, sup., saying "Company" for "Purchaser"*).

Requisitions.

5. THE Vendor shall, before the date fixed for completion, at his own expense furnish the Company with evidence of the age of the tenant for life mentioned in the Schedule hereto, such evidence to include the birth or baptismal certificate of such tenant for life, and any necessary evidence of identity by statutory declaration, or otherwise as may be required, and of the age, pedigree, and identity of the Vendor, such evidence to include birth or baptismal certificate, [marriage certificate,] and statutory declaration, or such other evidence of identity as may be reasonably required.

Evidence of birth, marriage, identity, &c., of tenant for life and Vendor.

6. THE Vendor shall cause all documents of title in the possession of himself or his incumbrancers to be produced to the Company free of expense to them.

Production of documents.

7. THE Company shall be entitled to all advantages of the said reversion from the date of this Agreement, and if the said tenant for life shall die before the completion of the purchase, the income of the funds and property mentioned in the Schedule hereto shall belong to the Company as from such death.

Provision in case of death of tenant for life before completion.

8. THE Vendor will at his own expense furnish to the Company, if required by them, before the completion of the purchase —

Evidence as to position of funds and as to incumbrances and notices.

(a) A statement signed by the trustees for the time being of the instrument under which the said reversion arises, stating that they hold the investments or property mentioned in the Schedule hereto, upon the trusts of the said instrument, together with a letter signed by one of such trustees authorising the Company to obtain information from the proper offices as to whether the

said investments are standing in the names of the said trustees, and what distringas notices (if any) affect the same; and

- (b) A statement signed by the said trustees of the aforesaid instrument, and also by any trustees of any derivative interest in the said investments or property affecting the Vendor's title, stating what notices the said trustees respectively have received of assignments, settlements, incumbrances, or other dealings affecting the said reversion.

Production of securities held by trustees.

9. THE Vendor shall also cause the said trustees of the aforesaid instrument to produce to the Company, free of expense to them, any securities or deeds relating to the said investments and property held by them.

Power for Company to rescind on default by Vendor.

10. IF the Vendor shall fail or be unable to comply with the terms of clauses 8 and 9 hereof, the Company may, by notice in writing delivered to the Vendor or to his solicitors, rescind this Agreement, and thereupon the Vendor shall pay to the Company their expenses of investigating the Vendor's title or otherwise incurred in connexion with this Agreement.

Vendor to commute duties.

11. (*Insert a clause corresponding to clause 3 of Precedent X., p. 257, sup.*)

[Power for Company where fund is in Court to obtain stop order.]

[12. As regards any fund in Court comprised in the reversion, the conveyance to the Company shall contain a clause empowering them and their assigns at their own expense to apply for and obtain a proper stop order that no part of such fund shall be sold, transferred, or dealt with without notice to the Company or their assigns, and upon such application to use the name of the Vendor as concurring in or consenting to the same.]

AS WITNESS, &c.

#### THE SCHEDULE ABOVE REFERRED TO.

The — reversion of the Vendor under the Will of —, who died on the — day of — [*or, under a Settlement dated the — day of —, 19—*], expectant on the death of —, the tenant for life, aged — years last birthday, in one — share of the following investments and property now standing in the names of or held by X. and Y., the present trustees of the above-mentioned Will [*or Settlement*], or the

investments and property for the time being representing the same, namely :—

(*State particulars of investments and property.*)

No. XXIII.

AGREEMENT *for* SALE *of* POLICIES OF ASSURANCE (*g*).

AN AGREEMENT made the — day of —, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, Parties. and the X. Company, whose registered office is at — (hereinafter called the Company), by —, their agent, of the other part.

WHEREBY IT IS AGREED as follows :—

1. THE Vendor agrees to sell, and the Company agree to purchase, at the price of £—, ALL those — policies of assurance mentioned in the Schedule hereto, and all money to become payable thereunder, whether by way of bonus or otherwise, and the full benefit thereof free from incumbrances. Agreement for sale.

2. (*Completion as in last Precedent, clause 2.*)

3. THE Vendor shall within seven days after the date hereof deliver to the Company (a) full copies of the said policies, together with the conditions indorsed thereon or incorporated therewith, and (b) a complete abstract of his title to the said policies. Copies of policies and abstract of title.

4. (*Requisitions as in Precedent I., clause 3, p. 233, sup., substituting "Company" for "Purchaser."*)

5. THE Vendor shall before the date hereinbefore fixed for the completion of the purchase, at his own expense, furnish the Company with proper evidence of the age of the life assured by each of the said policies (including a certificate of birth or baptism, and any necessary evidence of identity by statutory declaration, marriage certificate, or otherwise, as may be required), [and the Vendor will also procure the age of the assured to be admitted on each of the said policies if not already so admitted.] Evidence of age of assured and of identity.

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(*g*) See Goodeve, *Personal Property*, 4th ed., 139 *et seq.*, as to the law relating to life assurance policies, also note (*m*) to p. 226, *sup.* Notice of the assignment must be given to each office.

Policies to be warranted, indisputable, world-wide, and free from certain restrictions.

6. THE said policies are warranted by the Vendor, and are sold as being in the hands of assignees for value, (a) indisputable except on the ground of fraud, (b) world-wide, (c) free from all restrictions as to the occupation of the person whose life is assured, and (d) free from liability to forfeiture in the event of the death of the person whose life is assured by suicide, duelling, or at the hands of justice. [If by virtue of the conditions of any policy the same is in any respect not as warranted, the Vendor shall, before the date hereinbefore fixed for completion, procure the effectual removal or waiver of such conditions.]

Production of documents of title.

7. THE Vendor shall cause all documents of title in the possession of himself or his incumbrancers to be produced to the Company free of expense to them.

Provision in case of death of assured before completion.

8. THE Company shall be entitled to all advantages of each of the said policies from the date of this Agreement; and if any of the said policies shall become payable before the completion of the purchase, the full benefit of such policy shall belong to the Company.

Notices of incumbrances.

9. THE Vendor shall cause each of the insurance offices with whom the said policies are effected to furnish to the Company, immediately before the completion of the purchase, a statement of what notices (if any) such office has received of assignments, incumbrances, and other dealings with the policy or policies in that office.

Power for Company to rescind on default of Vendor.

10. IF the Vendor shall fail or be unable to comply with the terms of clauses 5, 6, and 9 hereof, the Company may, by notice in writing delivered to the Vendor or to his solicitors, rescind this Agreement so far as regards the purchase of the said policies, and thereupon the Vendor shall pay to the Company their expenses of investigating the Vendor's title or otherwise incurred in connexion with this Agreement.

Covenants for title.

11. IN the assignment to the Company the Vendor shall be expressed to assign as beneficial owner, [and the assignment shall contain a covenant by the Vendor from time to time to give to the Company or their assigns at least ten days' notice in writing of any intended change of abode, and that his executors or administrators will, within twenty-one days after his death, send information thereof to the Company or their assigns by prepaid letter sent through the post, addressed in the case of

the Company to them at their chief office in England for the time being (*h*)] .

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

PARTICULARS of the above-mentioned Policies.

| Name of Assurance Company. | Name of Person whose Life is Assured. | Amount Assured. | Amount of Bonuses up to date of this Agreement. | Premiums and when Payable. | Date of Policy. | No. of Policy. |
|----------------------------|---------------------------------------|-----------------|---|----------------------------|-----------------|----------------|
| 1.                         |                                       |                 |   |                            |                 |                |
| 2.                         |                                       |                 |   |                            |                 |                |
| 3.                         |                                       |                 |   |                            |                 |                |

(*h*) The latter part of this clause will not be used unless the vendor is selling a policy on his own life.

## DIVISION II.

### PURCHASE DEEDS.

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#### PART I.

#### FORMS IN PURCHASE DEEDS (a).

#### LIST OF FORMS IN PURCHASE DEEDS.

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*a)* In these Forms it is assumed that the parties to the conveyance have previously been defined as “the vendor,” “the purchaser,” “the borrower,” “the mortgagee,” “the trustees,” &c., as provided in the *Precedents*, Part II., *inf.*

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SECTION I.

*Recitals.*

WHEREAS the Vendor is now seised in fee simple in possession free from incumbrances [subject to and with the benefit of the Leases mentioned in the — Schedule hereto] of the hereditaments hereinafter described and has agreed to sell the same to the Purchaser [s] for the like estate in possession free from incumbrances at the price of £—.

No. 1.

Seisin of Vendor [variations where there are Leases affecting the property] and agreement for sale.

WHEREAS by an Indenture of Mortgage dated the — day of —, and made between the Vendor of the one part and the Mortgagees of the other part, the Vendor, being then seised in fee simple in possession free from incumbrances, conveyed the hereditaments hereinafter described [with other hereditaments (b)] unto the Mortgagees in fee simple (c) by way of mortgage for securing payment to the Mortgagees of the principal sum of £— [upon a joint account (d)] with interest thereon as therein mentioned :

No. 2.

Mortgage of freeholds where the Mortgagees concur with the owner in selling; agreement for sale and for Mortgagees to concur. Variations where only part of the mortgaged property is sold.

AND WHEREAS the Vendor has agreed to sell the hereditaments hereinafter described to the Purchaser for an estate in fee simple in possession free from incumbrances at the price of £—:

(b) The words in square brackets will be used where the mortgage comprised other property not included in the sale.

(c) If the mortgage is dated before 1882, for “in fee simple” substitute “and their heirs.”

(d) These words are only necessary where the mortgage is made before 1882 and some of the mortgagees are dead: Conv. Act, 1881, s. 61. If that is the case the names of the original mortgagees will be set out in the recital of the mortgage and the deaths recited.

AND WHEREAS the principal sum of £—— and no more is now owing to the Mortgagees upon the security of the recited Mortgage, all interest thereon having been paid as they hereby acknowledge, and they have agreed on receiving the sum so due to them [on receiving the sum of £——(*e*)] [being satisfied with the security which will remain after the execution of these presents (*f*)] to join in these presents in manner hereinafter appearing.

## No. 3.

Mortgage of freeholds where the Mortgagees are selling under their statutory power of sale.

WHEREAS by an Indenture of Mortgage dated the —— day of ——, and made between —— (*the Mortgagor*) of the one part and the Vendors (*g*) of the other part, the hereditaments hereinafter described were conveyed unto the Vendors in fee simple by way of mortgage for securing payment by the said —— (*Mortgagor*) on the day therein mentioned and since passed of the sum of £—— advanced by them [upon a joint account (*h*)] to the said —— (*Mortgagor*), with interest thereon as therein mentioned.

## No. 4.

Mortgage of freeholds where Mortgagees are selling under an express power of sale and the mortgage is dated after 1881. Variations where the mortgage is dated before 1882.

*Add to Form No. 3 (i).*

AND the said Indenture contained a power for the Vendors and the persons deriving title under them at any time after the day therein mentioned and since passed without any further consent by the said —— (*Mortgagor*) or the persons deriving title under him to sell the said hereditaments [either by public auction or by private contract, and subject to any conditions as to title or otherwise as the Vendors or the persons

(*e*) These words will be used where the mortgagees release part of their security and receive part of the purchase-money.

(*f*) These words will be used where the mortgagees release part of their security without receiving any consideration.

(*g*) In this case the mortgagees will be defined as the vendors.

(*h*) These words are only inserted where some of the mortgagees are dead: see Conv. Act, 1881, s. 61. In that case the names of the original mortgagees will be set out in the recital of the mortgage and the deaths recited.

(*i*) S. 19 of the Conv. Act, 1881, applies only if and as far as a contrary intention is not expressed in the mortgage deed, and takes effect subject to the terms of the mortgage deed: sub-s. 3. In *Life Interest, &c. Corp. v. Hand-in-Hand, &c. Society*, 1898, 2 Ch. 230, 239; 67 L. J. Ch. 548, it was held that an express power of sale did not exclude the statutory power.

Effect of express power of sale after 1881.

deriving title under them (*k*) should think fit, with power for the Vendors and the persons deriving title under them (*k*) to execute assurances and give effectual receipts for the purchase-money (*l*)].

AND WHEREAS the said sum of £—, and an arrear of interest thereon are still due to the Vendors upon the security of the recited mortgage and they have in exercise of their power of sale agreed to sell the hereditaments hereinafter described to the Purchaser for an estate in fee simple in possession free from incumbrances at the price of £—.

No. 5.

Where Mortgages are selling either under an express or the statutory power. Recital that principal and interest is due and agreement for sale.

AND WHEREAS by an Indenture of Mortgage dated the — day of —, and made between the said — (*Mortgagor*) of the one part and — and — (*Mortgagees*) of the other part, the said — (*Mortgagor*) conveyed the hereditaments hereinafter described unto the said — and — (*Mortgagees*) in fee simple (*m*), subject to redemption by the said — (*Mortgagor*) on payment of the sum of £— then advanced by the said — and — (*Mortgagees*) and interest thereon as therein mentioned.

No. 6.

Mortgage of freeholds made after the commencement of title and subsequently discharged.

AND WHEREAS by an Indenture of Further Charge dated the — day of —, and made between the Vendor of the one part and the Mortgagees of the other part, the Vendor charged the hereditaments comprised in the recited mortgage with the payment to the Mortgagees of the further sum of £—, as well as the said sum of £—, making the aggregate mortgage debt of £—, with interest thereon as therein mentioned.

No. 7.

Further Charge.

AND WHEREAS by an Indenture of Transfer dated the — day of —, and made between the said — and — (*Mortgagees*) of the one part and — (*Transferee*) of the other part, the said — and — (*Mortgagees*) assigned the said

No. 8.

Transfer of mortgage of freeholds.

(*k*) The words “or the persons deriving title under them” will only be inserted where some of the original mortgagees are dead or if there have been transfers of the mortgage, in which case the names of the mortgagees will be set out in this recital.

(*l*) S. 19 of the Conv. Act, 1881, only applies to mortgages executed after 1881: see sub-s. 4. As to mortgages executed before 1882, see Lord Cranworth’s Act, 1860, (23 & 24 Viet. c. 115, Part II.), repealed by s. 71 of the Conv. Act, 1881, which preserves, in the case of mortgages prior to 1882, the powers conferred by the former Act.

(*m*) Or “and their heirs” if the mortgage is dated before 1882.

mortgage debt of £—— and the interest thereon to the said —— (*Transferee*) absolutely, and also conveyed to him in fee simple (*u*) the hereditaments comprised in the recited Mortgage [and then remaining vested in the said —— and —— (*Mortgagees*) (*v*)], subject to the right of redemption then subsisting therein, on payment of the said mortgage debt of £—— and the interest thereon.

No. 9. Reconveyance of mortgage of freeholds. AND WHEREAS by an Indenture of Reconveyance dated the —— day of ——, and made between the said —— and —— (*Mortgagees*) of the one part and the said —— (*Mortgagor*) of the other part in consideration of the payment by the said —— (*Mortgagor*) of all principal money and interest then owing upon the security of the recited Mortgage, the said —— and —— (*Mortgagees*) conveyed the hereditaments comprised in the recited Mortgage unto the said —— (*Mortgagor*) in fee simple discharged from all principal money and interest secured by and all claims under the recited Mortgage.

No. 10. Settlement of freeholds on a sale under the Settled Land Acts. WHEREAS under an Indenture of Settlement dated the —— day of ——, and made between the Vendor of the 1st part, —— of the 2nd part, and —— of the 3rd part (being a settlement made in consideration of the marriage solemnised on the —— day of —— between the Vendor and the said ——), the hereditaments hereinafter described (with other hereditaments) now stand limited free from incumbrances to uses under which the Vendor is tenant for life in possession and the Trustees [as appears from the —— Schedule hereto (*p*)] are the present Trustees thereof (*q*) with a power to sell all or any of the hereditaments thereby settled [*or for all the purposes of the Settled Land Acts, 1882 to 1890*].

No. 11. Resettlement of freeholds on WHEREAS by an Indenture of Resettlement dated the —— day of ——, and made between —— (*first tenant for life*) (since

(*u*) Or “and his heirs” if the transfer was made before 1882.

(*v*) These words are only necessary where part of the original security has been sold or released.

(*p*) For a form of a schedule containing appointments of new trustees see Form No. 12.

(*q*) In settlements made before 1883 the power of sale should be referred to in order to show who are Settled Land Act trustees. In settlements made after 1882 the trustees will probably be expressly appointed for the purposes of the Acts, and then the words within brackets will be substituted.

deceased) of the 1st part, the Vendor of the 2nd part, and — and — (hereinafter called the Original Trustees) of the 3rd part, the hereditaments hereinafter described (with other hereditaments) were limited TO THE USE of the Original Trustees for the term of 500 years upon certain trusts for raising portions for the younger children of the said — (under which trusts no money has yet been raised (*r*)), and subject thereto and to a yearly jointure rent-charge of £ — limited to — during the residue of her life if she should survive the said — (which rent-charge determined by reason of her death on the — day of — (*s*)), TO THE USE of the said — during his life, with remainder to the use of the Vendor during the residue of his life with remainders over, and it was provided by the said Resettlement that the Original Trustees and the survivor of them and the executors or administrators (*ss*) of such survivor or other the trustees or trustee for the time being thereof should be the trustees or trustee thereof for the purposes of the Settled Land Acts, 1882 to 1890, and that the said — (*First Tenant for Life*) during his life and after his death the Vendor during the residue of his life should have power to appoint a new Trustee or new Trustees thereof.

a sale under  
the Settled  
Land Acts.

AND WHEREAS the said — (*first tenant for life*) died on the — day of — :

AND WHEREAS under and by reason of the Indentures and facts mentioned in the — Schedule (*t*) hereto the Trustees are the present Trustees of the recited Resettlement.

THE — SCHEDULE ABOVE REFERRED TO.

No. 12.

Particulars, documents, and facts relating to the appointment of new Trustees of the recited Resettlement [Will].

Schedule  
showing  
appointments  
of new  
Trustees.

10th March, 1894. On this date the said (*one of the Trustees*) died.  
1st July, 1895. By an Indenture of Appointment of this date made between — (*person having power to appoint new trustees*) of the 1st part, the said

(*r*) If money has actually been raised by mortgage or sale of the term the tenant for life cannot override it: S. L. Act, 1882, s. 20 (2) (ii.).

(*s*) If the jointure were subsisting the tenant for life could override it: *ib.*, s. 20; unless a term had been created under Conv. Act, 1881, s. 44, and money raised on the term.

(*ss*) See as to powers being exercisable by the personal representatives of a sole or last surviving trustee: T. Act, 1893, s. 22; *Re Routledge*, 1909, 1 Ch. 280; 78 L. J. Ch. 136.

(*t*) For a form of schedule, see Form 12.

— (*retiring Trustee*) of the 2nd part, and the Trustees (*u*) of the 3rd part, the said — (*person appointing*), in exercise of the power for that purpose conferred on him by the recited Resettlement [Will], appointed the Trustees to be Trustees thereof in the place of the said — (*deceased Trustee*) and — (*retiring Trustee*), who retired from the Trust, and for all the purposes thereof [and the hereditaments then remaining subject to the limitations of the recited Resettlement [Will] were by declaration (*x*) duly vested in the Trustees for the estates terms or interests therein of the original Trustees upon the trusts thereof (*y*)] (*recite in the schedule in a similar way any other appointments if required*).

## No. 13.

Will devising freeholds in settlement on a sale under the Settled Land Acts.

WHEREAS —, deceased, being at his death seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, duly made his Will dated the — day of —, and thereby after appointing — and — to be the executors and trustees of his Will for all the purposes of the Settled Land Acts, 1882 to 1890, devised his real estate (including the hereditaments hereinafter described) To THE USE of the Vendor during his life, with remainders over :

Death and Probate.

AND WHEREAS the said testator died on the — day of — without having revoked or altered his said Will [except by a codicil dated the — day of —, which did not affect the devise of his real estate contained in his said Will] which [said Will and codicil were] was on the — day of — duly proved at the Principal [— District] Probate Registry by the executors therein named :

[Conveyance to uses by way of assent].

[AND WHEREAS by an Indenture dated the — day of —, and made between the said — and — (*the executors*) of the one part and the Vendor of the other part, the said — and — being satisfied as to the payment of the funeral and testa-

(*u*) "The trustees" will be defined in the deed to mean the present trustees.

(*x*) See T. Act, 1893, s. 12.

(*y*) These words will be used where the legal estate in the freeholds is in the trustees. A vesting declaration is also required for any settled leaseholds and for any terms of years created by the settlement or for any estate which may be given to the trustees, *e.g.*, by a name and arms clause.

mentary expenses and debts of the said testator, and by way of assent to the recited devise conveyed the freehold hereditaments so devised in settlement as aforesaid to the Vendor in fee simple, To THE USES, Upon the trusts and subject to the powers and provisions declared concerning the same by the recited Will (c).]

AND WHEREAS the Vendor as tenant for life in possession under the recited Settlement [Will] has agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——.

No. 14.

Agreement  
for sale by  
tenant for life.

WHEREAS by an Indenture dated the —— day of ——, and made between the said —— (*husband*) of the 1st part, the said —— (*wife*) (then —— spinster) of the 2nd part, and the Vendors (a) of the 3rd part (being a conveyance made in consideration of the marriage solemnised on the —— day of —— between the said —— and ——) the hereditaments hereinafter described were [with other hereditaments] conveyed To THE USE (after the solemnisation of the said marriage) of the Vendors in fee simple Upon trust to sell the same or any part thereof at the request in writing of the said —— (*husband*) and —— (*wife*) during their joint lives, And to stand possessed of the net proceeds of such sale and also of the rents and profits of the premises until sale Upon the trusts therein referred to (b).

No. 15.

Conveyance of  
freeholds upon  
trust for sale.

WHEREAS ——, being at his death seised of the hereditaments hereinafter described for an estate in fee simple in possession free from incumbrances, duly made his Will dated the —— day of —— and thereby, after appointing the

No. 16.

Will devising  
freeholds upon  
trust for sale.

(z) This recital of a conveyance to the uses of the Will is only required where the testator died after 1897: see L. T. Act, 1897, Part I. A mere assent in writing would be sufficient to pass the legal estate to the uses of the Will, but the practice is to take a conveyance, which is less likely to be mislaid.

Assent to a  
devise or  
conveyance  
to uses.

(a) In this case the trustees for sale will be defined as "the vendors."

(b) Trustees for sale, where the trust for sale was created after 1881, have power to sell by auction or private treaty, &c.: T. Act, 1893, s. 13. Lord Cranworth's Act (1860) (23 & 24 Vict. c. 145, Part I.), conferred similar powers on trustees with express powers of sale, but required the consent of persons entitled to the rents and profits, who were *sui juris*, unless their concurrence was expressly exempted by the instrument conferring the power. S. 35 of Conv. Act, 1881, took the place of Part I. of Lord Cranworth's Act, which was repealed by s. 64 of the S. L. Act, 1882, which itself was repealed by the Statute Law Revision Act, 1898. S. 35 of the Conv. Act, 1881, was repealed by s. 51 of the T. Act, 1893.

Power of  
trustees to  
sell by auction.

Vendors (*c*) to be his executors and trustees, devised to them his real estate (including the hereditaments hereinafter described) Upon trust to sell the same and to stand possessed of the net proceeds of such sale and also of the rents and profits of the premises until sale Upon the trusts therein mentioned :

AND WHEREAS the said testator died on the — day of — without having revoked or altered his said Will, which was on the — day of — duly proved at the — Probate Registry by the Vendors (*d*).

#### No. 17.

Agreement for sale, where trustees for sale are selling.

AND WHEREAS the Vendors (*the trustees for sale*) as such trustees as aforesaid have [at the request of the said — and — (*the persons required by the trust to consent to the sale*) (testified by their execution of these presents)] agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £ —.

#### No. 18.

Will on a sale under the Land Transfer Act, 1897, Part I. Variation where there is an intestacy.

WHEREAS — being at his death seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, died on the — day of — (*either*) having by his Will dated the — day of — appointed the Vendors to be his executors, who on the — day of — duly proved his said Will at the Principal [— District] Probate Registry (*e*) (*or*) intestate, and Letters of Administration to his estate and effects were on the — day of — granted out of the Principal [— District] Probate Registry to the Vendors.

#### No. 19.

Title to copyholds and agreement for sale.

WHEREAS the Vendor is now seised of the hereditaments hereinafter described and covenanted to be surrendered for an estate of inheritance in possession according to the custom of the Manor of —, in the County of —, and has agreed to sell the same to the Purchaser free from incumbrances at the price of £ — (*f*).

#### No. 20.

Admittance to copyholds and

Sale by executors of freeholds.

WHEREAS on the — day of — the Vendor was, pursuant to a Surrender dated, &c. [*or* a specific devise contained in the

(*e*) The trustees for sale will be defined as “the vendors” in this case.

(*d*) If the testator died after 1897 and the executors have not assented to the devise, title may be made under L. T. Act, 1897, Part I., see Form No. 18, *inf.*

(*e*) This Form is only applicable where the testator died after 1897 and the executors have not assented to the devise.

(*f*) If this Form is used the date of the admission should be referred to in the parcels. If preferred the admission may be recited, see next Form.

Will of —, dated, &c., or an Indenture of Bargain and Sale, agreement to sell same. dated, &c.], admitted to the copyhold hereditaments hereinafter described, To hold to the Vendor and his heirs at the will of the lord according to the custom of the Manor of —, in the County of — (g) :

AND WHEREAS the Vendor has agreed to sell to the Purchaser the said copyhold hereditaments for an estate of inheritance in possession according to the custom of the said Manor subject to the accustomed fines, heriots, suits and services, but free from incumbrances, at the price of £—.

WHEREAS by an Indenture of Mortgage dated the — day of — and made between the Vendor of the one part and the Mortgagees of the other part, the Vendor covenanted with the Mortgagees that the Vendor would surrender to the lord of the Manor of — in the County of — the hereditaments hereinafter described, To the use of the Mortgagees and their heirs according to the custom of the said Manor, subject to the usual proviso for making void the said surrender on payment by the Vendor to the Mortgagees of the sum of £ —, with interest thereon as therein mentioned : No. 21.

Mortgage by way of covenant to surrender (without a surrender) where Mortgagees concur with Vendor.

AND WHEREAS no surrender has ever been made pursuant to the foregoing covenant (h) :

AND WHEREAS the Vendor has agreed to sell the said hereditaments to the Purchaser free from incumbrances for an estate of inheritance according to the custom of the said Manor at the price of £— :

AND WHEREAS the principal sum of £— and no more is still owing to the Mortgagees upon the security of the recited Mortgage, all interest having been paid as they hereby acknowledge, and they have agreed upon receiving the sum so due to them to join in these presents in manner hereinafter appearing.

(g) If preferred, the surrender, bargain and sale, conveyance under a statutory power, or devise on which the admission is based may also be recited in full.

(h) In this case the mortgagees have a mere equitable security, and it is sufficient for them to join in the covenant to surrender by the vendor to acknowledge payment of the mortgage money and release their equity. For a form of a recital of a conditional surrender, see next Form. If there has been a conditional surrender without admission the mortgagees obtain an imperfect legal interest. To discharge this a warrant of satisfaction is required. Procedure for discharging a mortgage of copyholds where the mortgagee has not been admitted.

No. 22.

Mortgage by way of covenant to surrender; conditional surrender and admittance of Mortgagees and agreement for sale, where Mortgagees sell under their power of sale.

WHEREAS by an Indenture of Mortgage dated the — day of — and made between — (*the Mortgagor*) of the one part and the Vendors (*the Mortgagees*) of the other part, the said — (*Mortgagor*) covenanted with the Vendors that he would surrender to the lord of the Manor of — in the County of — the hereditaments hereinafter described, To THE USE of the Vendors and their heirs according to the custom of the said Manor, subject to the usual proviso for making void the said surrender on payment (*i*) on a day therein mentioned and since passed by the said — (*the Mortgagor*) to the Vendors of the sum of £ — then advanced to him with interest thereon as therein mentioned :

AND WHEREAS on the — day of — the said — (*Mortgagor*) out of court surrendered the said hereditaments into the hands of the lord of the said Manor by the hands and acceptance of his steward according to the custom of the said Manor, To THE USE of the Vendors and their heirs at the will of the lord according to the said custom and by and under the rents, suits and services therefor due and of right accustomed, but subject to a condition for making void such surrender if the said — (*Mortgagor*) should on a day therein mentioned and since passed pay to the Vendors the said sum of £ — with interest thereon as therein mentioned :

AND WHEREAS (*k*) on the — day of — the Vendors were duly admitted to the said hereditaments pursuant to the recited surrender, To HOLD to them and their heirs by copy of court roll at the will of the lord according to the said custom by and under the rents, suits and services therefor due and of right accustomed :

AND WHEREAS the Vendors have agreed to sell the said hereditaments (*l*) to the Purchaser free from incumbrances for an estate of inheritance according to the custom of the said Manor at the price of £ —.

(*i*) If the mortgage is made before 1882 the express power of sale will also be recited.

Where mortgagee must be admitted to copyholds.

(*k*) The mortgagees must be admitted before they can surrender to the use of a purchaser. It is not usual to take admission until a sale, for if the mortgage is paid off it involves a surrender to the mortgagor, who on admission will be liable to pay the usual fees.

(*l*) The statutory power of sale is implied by the covenant to surrender, which is by deed : Conv. Act, 1881, s. 19.

WHEREAS on the — day of — the Vendor was duly admitted to the hereditaments hereinafter described, To hold to him and his heirs by copy of court roll at the will of the lord according to the custom of the Manor of —, in the County of —, by and under the rents, suits and services therefor due and of right accustomed :

No. 23.

Admission, conditional surrender, and warrant to enter up satisfaction where mortgage has been paid off.

AND WHEREAS (*recite covenant to surrender, see Form No. 21*):

AND WHEREAS on the — day of — the Vendor out of court surrendered the said hereditaments (*continue recital of conditional surrender, as in Form No. 22, substituting the names of the Mortgagees for the Vendors, and "the Vendor" for "the Mortgagor"*):

AND WHEREAS by a Memorandum dated the — day of — under the hands of the said — and — (*Mortgagees*), and addressed to the steward of the said Manor, after recitals whereby it appeared that the said principal money and interest had been discharged (*m*), the said — and — (*Mortgagees*) authorised the said steward to enter up satisfaction of the recited conditional surrender.

WHEREAS by an Indenture of Settlement dated the — day of —, and made between the Vendor (*n*), of the 1st part, — the wife of the Vendor (then —, spinster) of the 2nd part, and the Trustees of the 3rd part (being a settlement made in consideration of the marriage shortly afterwards solemnised between the Vendor and the said —), the freehold hereditaments therein mentioned [including the freehold hereditaments hereinafter described (*o*)] were limited after the solemnisation of the said

No. 24.

Settlement of copyholds where settled by reference to the uses of freeholds and the tenant for life sells, the Trustees being on the rolls.

(*m*) A separate receipt can be taken in this case. Of course a warrant to enter up satisfaction is only applicable where the mortgagees have not been admitted. Before the Stamp Act, 1870, warrants were not liable to duty. Now, in the case of a mortgage of copyholds alone, the warrant is charged with *ad valorem* reconveyance duty. Where copyholds and freeholds are included in the same mortgage, the reconveyance of the freeholds is alone chargeable. Several warrants relating to one mortgage of copyholds in different manors are chargeable as to one only. The remainder bear an adjudication or a denoting stamp: *Alpe*, 11th ed., 177.

(*n*) The tenant for life will be defined as "the Vendor," and the trustees as "the Trustees."

(*o*) These words in brackets will not be used unless freeholds are also being dealt with.

Stamp on warrant to enter up satisfaction.

marriage, To the use of the Vendor during his life, With divers remainders over, and the Trustees were thereby appointed to be the Trustees thereof for all the purposes of the Settled Land Acts, 1882 to 1890 (*p*). And by the same Indenture the Vendor covenanted that he would forthwith after the solemnisation of the said marriage surrender according to the custom of the Manor of —, in the County of —, the copyhold hereditaments therein mentioned (including the hereditaments hereinafter described), To the use of the Trustees and their heirs Upon trusts and subject to powers and provisions as nearly corresponding with the uses, trusts, powers and provisions thereby declared concerning the freehold hereditaments thereby settled as the different tenure would permit :

AND WHEREAS at a court held for the said Manor on the — day of — the Vendor, pursuant to the hereinbefore recited covenant, surrendered the said copyhold hereditaments, To the use of the Trustees and their heirs and they were duly admitted thereto on the — day of —.

AND WHEREAS the Vendor as tenant for life in possession under the recited Settlement has agreed to sell (*q*) to the Purchaser the hereditaments hereinafter described, and the inheritance thereof in possession, according to the custom of the said Manor free from incumbrances at the price of £—.

#### No. 25.

Settlement of copyholds on trust for sale, the Trustees being admitted.

WHEREAS by an Indenture of Settlement dated the — day of —, and made between the said — (*husband*) of the 1st part, the said — (*wife*) of the 2nd part, and the Vendors (*r*) of the 3rd part (being a settlement made in consideration of the marriage shortly afterwards solemnised between the said — and —), the said — (*husband*) covenanted with the Vendors that he would forthwith after the solemnisation of the said marriage surrender to the lord of the Manor of — the copyhold hereditaments therein mentioned (including the hereditaments hereinafter described), To the use of the Vendors and

(*p*) If the settlement was made before 1883, instead of referring to the appointment of S. L. Act trustees say: "And the said Indenture contained a power for the Trustees to sell all or any of the hereditaments thereby settled."

(*q*) A conveyance by a tenant for life of copyholds operates in the same way as a surrender by the trustees on the rolls: S. L. Act, 1882, s. 20.

(*r*) The trustees for sale will be defined as "the vendors."

Effect of conveyance by tenant for life of copyholds.

their heirs, Upon trust to sell the same at the request in writing of the said — and —, And to stand possessed of the net proceeds of such sale, and also of the rents and profits of the premises until sale, Upon the trusts therein referred to :

AND WHEREAS on the — day of — the said — (*husband*) out of court and pursuant to the hereinbefore recited covenant surrendered the said hereditaments, To THE USE of the Vendors and their heirs, and they were duly admitted thereto on the — day of — (*s*).

WHEREAS —, deceased, being at his death seised of the hereditaments hereinafter described for an estate of inheritance according to the custom of the Manor of —, after appointing the Vendors to be his executors and trustees, devised the said hereditaments, To THE USE of such person or persons as the Vendors should at any time within twenty-one years after his death by deed appoint for giving effect to any sale (*t*), and subject thereto, To THE USE of the Vendors and their heirs, upon the trusts therein mentioned.

No. 26.

Will devising copyholds to such uses as the executors should appoint for purposes of a sale, the executors not being admitted (in a bargain and sale).

(*s*) In this case title will be made by the trustees unless an order has been made under s. 7 of the S. L. Act, 1884 ; see Form No. 17.

(*t*) A mere direction to sell (*R. v. Wilson* (1862), 3 B. & S. ; 32 L. J. Q. B. 6) or a devise to such uses as the executors may appoint (*Glass v. Richardson* (1852), 2 De G. M. & G. 658 ; 22 L. J. Ch. 105 ; *Flack v. Downing College* (1853), 13 C. B. 945 ; 22 L. J. C. P. 229) enables the executors to make a title by bargain and sale without admittance before the lord seizes *quousque* (i.e., for want of a tenant), and so saves fees ; see also *Holler v. Preston* (1769), 2 Wils. 400. This does not apply where the testator is not tenant on the rolls : *Re Townsend*, 1895, 1 Ch. at p. 723 ; 64 L. J. Ch. 334.

Sale of copyholds by trustees for sale.

When admittance by trustees not required immediately.

Where several executors are appointed and one disclaims, the remaining executors can sell by bargain and sale without admittance, for 21 Hen. 8, c. 4, applies to copyholds : *Peppercorn v. Wayman* (1852), 5 De G. & S. 230 ; 21 L. J. Ch. 827, see also *Crawford v. Forshaw*, 1891, 2 Ch. 261 ; 60 L. J. Ch. 683 ; and *Theobald on Wills*, 7th ed., 435.

Disclaimer by executors.

Where a testator directs certain persons to sell, they need not be admitted : *Cruise, Dig.*, 3rd ed., vol. 1, s. 21, p. 315. It is conceived that new trustees, appointed in the place of executors before the lord seizes *quousque*, can make title by bargain and sale without admittance, if it appears from the Will that the power is given as an incident of office, e.g., if the testator appoints A. and B. to be his executors and trustees and then directs his trustees to sell. The fact that the power is one requiring the exercise of a wide personal discretion is not sufficient to exclude the *prima facie* presumption that a power given to trustees, which enables

Whether only executors can sell without admittance.

No. 27.      WHEREAS —, deceased, being at his death seised of the hereditaments hereinafter described for an estate of inheritance according to the custom of the Manor of —, in the County of —, after appointing the Vendors to be his executors and trustees, devised all his real estate (*u*) (including the hereditaments hereinafter described) to the Vendors, Upon trust that they or other the trustees or trustee for the time being of his said Will should sell the same and stand possessed of the proceeds of such sale upon the trusts therein mentioned :

Death and Probate.      AND WHEREAS the said testator died on the — day of — without having revoked or altered his said Will, which was on the — day of — duly proved at the — Probate Registry by the Vendors :

Admission of Vendors.      AND WHEREAS on the — day of — the Vendors were duly admitted to the said hereditaments, To hold to them and their heirs by copy of court roll at the will of the lord according to the said custom by and under the rents, suits and services therefor due and of right accustomed.

No. 28.      WHEREAS by an Indenture of Lease dated the — day of —, and made between — of the one part and — of the other part, ALL those hereditaments situated in the Parish of —, in the county of —, Together with the buildings thereon erected and known as — (*x*), were demised to the said — for the term of — years from the — day of — at the yearly rent of £—, and subject to the lessee's covenants and the conditions in the said Lease reserved and contained :

AND WHEREAS after divers [mesne assignments and] acts in the law (*y*) ultimately under an Indenture of Assignment dated the—

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them to deal with the trust property, is given them as an incident of their office: *Re Smith*, 1904, 1 Ch. at p. 144; *Re Bacon*, 1907, 1 Ch. at p. 479; 76 L. J. (Ch. 213. The case would, of course, be stronger where the power is given to the trustees for the time being of the Will.

Where executors must be admitted.      (*u*) S. 26 of the Wills Act, 1837, provides that a general devise shall include copyholds, unless an intention to the contrary appears from the Will. Where copyholds are devised in this manner the trustees must be admitted and then surrender to the use of a purchaser.

Parcels in case of leaseholds.      (*x*) In assignments of leaseholds the parcels should be set out in the recitals and not in the operative parts, thus reversing the rule as to freeholds.

(*y*) This recital must accord with the facts, *e.g.*, there may be no mesne assignments and the last disposition may be a will appointing executors.

day of —, and made between — of the one part and the Vendor of the other part, the said hereditaments became and now are vested in the Vendor for the residue of the term granted by the recited Lease:

AND WHEREAS the Vendor has agreed to sell to the Purchaser free from incumbrances the premises comprised in the recited Lease for the residue of the term thereby granted at the price of £—.

(*Recite Lease as in Form No. 28.*)

AND WHEREAS by an Indenture of Mortgage dated the — day of —, and made between — (*Lessee*) of the one part and the Vendors (*z*) of the other part, the premises comprised in the recited Lease were demised by the said — to the Vendors for the residue of the term thereby granted (except the last — days thereof) by way of mortgage for securing payment to the Vendors of the principal sum of £— and interest thereon on a day therein mentioned and since passed (*a*). [And the said — thereby covenanted with the Vendors that he and the persons deriving title under him would (subject to the right of redemption) thenceforth stand possessed of the head term demised by the recited Lease upon trust to dispose of the same as the Vendors should from time to time direct.] *Add either* [And the said Indenture contained the usual power for the Vendors by deed to remove the said — or the persons deriving title under him from being trustee or trustees and to appoint a new Trustee or Trustees for the purposes of the trust aforesaid (*b*)] *or* [And the said — thereby irrevocably appointed the Vendors and each of them to be his attorneys or attorney to execute in his name and on his behalf any deed of assignment of the head term granted by the recited Lease which might be required to vest the same in a Purchaser].

No. 29.

Mortgage by sub-demise where Mortgagees are selling under their statutory power. Variations where the head term is got in by appointment of a new Trustee or under an irrevocable power of attorney.

(*z*) In this case the mortgagees will be defined as "the vendors."

(*a*) The power of sale must be recited if the mortgage is made before 1882. If the sale is made under Lord Cranworth's Act, 1860 (23 & 24 Vict. c. 145, repealed by the Conv. Act, 1881, except as regards mortgages made before 1882, see s. 71), the head term can be assigned by the mortgagees.

Head term got in under Lord Cranworth's Act.

(*b*) See *London and County Bank v. Goddard*, 1897, 1 Ch. 642; 66 L. J. Ch. 261. This power makes it unnecessary to refer to the power of attorney, if inserted in the mortgage, and enables a vesting declaration of the head term to be made under T. Act, 1893, s. 12.

No. 30. *(Recite Lease as in Form No. 28.)*

Settlement of  
leaseholds by  
reference to  
the uses of  
freeholds.

[Or Will  
bequeathing  
leaseholds on  
trusts corre-  
sponding to  
uses of free-  
holds.]

AND WHEREAS by an Indenture of Settlement dated the — day of —, and made between the Vendor (*c*) of the 1st part, — of the 2nd part, and the Trustees of the 3rd part, the freehold hereditaments therein mentioned were limited To THE USE of the Vendor during his life, with remainders over, And the Trustees were thereby appointed to be Trustees thereof for all the purposes of the Settled Land Acts, 1882 to 1890 (*d*), And by the same Indenture the premises comprised in the recited Lease were (with other leasehold hereditaments) assigned to the Trustees for the residues of the respective terms for which the same were respectively granted [(*c*) the said —, deceased (who died on the — day of —), duly made his Will dated the — day of — (and proved by the Vendors on the — day of —) and thereby, after appointing the Trustees to be his executors and trustees for the purposes of the Settled Land Acts, 1882 to 1890, and after devising his freehold hereditaments To THE USE of the Vendor during his life, with remainders over, bequeathed his leasehold hereditaments (including the premises comprised in the recited Lease) to the Trustees] (*f*), Upon trust out of the rents and profits thereof to pay the rents and perform the lessee's covenants in the said respective Leases reserved and contained, And subject thereto Upon trusts and subject to powers and provisions as nearly corresponding with the uses, trusts, powers and provisions by the said Indenture [his said Will] declared concerning the freehold hereditaments thereby settled as the different tenure would permit, but subject to a restriction against the absolute vesting of leaseholds for years in any infant tenant in tail [male or in tail] by purchase as therein mentioned.

No. 31. *(Recite Lease as in Form No. 28.)*

Assignment of  
leaseholds [or  
Will be-  
queathing  
leaseholds] on  
trust for sale.

AND WHEREAS by an Indenture of Assignment dated the — day of —, and made between — (*husband*) of the 1st part,

(*c*) The tenant for life will be defined as the vendor, and the S. L. Act trustees as the trustees.

(*d*) If the settlement was made before 1883, state that the trustees were given a power of sale instead of being appointed trustees for the purposes of the Acts.

(*e*) In the case of a Will the part within square brackets should be substituted for the foregoing part of this recital.

(*f*) This part of the Form applies whether a settlement or Will is recited.

— (*wife*) of the 2nd part, and the Vendors (*g*) of the 3rd part, the premises demised by the recited Lease were assigned to the Vendors for the residue of the term thereby granted, or [ —, deceased, duly made his Will dated the — day of —, and thereby, after appointing the Vendors to be his executors and trustees, bequeathed to them his leasehold hereditaments (including the premises comprised in the recited Lease)], Upon trust at the request in writing of the said — and — to sell the same (*h*) and to stand possessed of the net proceeds of sale and also of the rents and profits of the premises until sale Upon the trusts therein mentioned or referred to :

[AND WHEREAS the said — died on the — day of — without having revoked or altered his said Will, which was on the — day of — duly proved at the — Probate Registry by the Vendors.]

(*Recite Lease as in Form No. 28.*)

AND WHEREAS the said — (*Lessee*) died on the — day of — having by his Will dated the — day of — appointed the Vendors(*i*) to be his executors, who on the — day of — duly proved the same at the Principal [— District] Probate Registry.

No. 32.

Will  
bequeathing  
leaseholds (on  
a sale by  
executors).

## SECTION II.

### *Parcels.*

ALL THAT piece of land known as —, situated in the Parish of —, in the County of —, containing —a. —r. —p. or thereabouts, [and bounded on the north by land of — and on all other sides by land of —, which piece of land is now in the occupation of — as yearly tenant thereof, and is] delineated on the plan (*k*) drawn on these presents and thereon coloured —.

No. 1.

A piece of  
land.

(*g*) The trustees for sale will here be defined as “the vendors.”

(*h*) If the trust is created after 1882, then T. Act, 1893, s. 13, supplies the incidental powers, and see second note to Form No. 15, *sup.*

(*i*) The executors will be defined as “the vendors.”

(*k*) Care should be taken that the plan is as accurate as possible, see Dart, 7th ed., 554; in most cases the ordnance survey is now used as the basis of the plan. As to how far the Courts will be guided by a plan on a deed, see *Willis v. Watney* (1881), 51 L. J. Ch. 181; *Mickithwait v. Newlay, &c., Co.* (1886), 33 Ch. D. 133; *Horne v. S ruben*, 1902, A. C. 454; 71 L. J. P. C. 88; *Mellor v. Walnesley*, 1904, 2 Ch. 525; 1905, 2 Ch. 164; 74 L. J. Ch. 475; *Re Sansom and Narbeth* (1910), 79 L. J. Ch. 491; see also 26 Law Q. Rev. 268.

The use of  
plans.

## No. 2.

An estate  
where  
described in  
a Schedule.

Variation  
where mines,  
minerals, and  
powers of  
working are  
reserved.

ALL THOSE hereditaments situated in the Parishes of — and —, in the County of —, containing in the whole —a. —r. —p. or thereabouts, and known as the — Estate, and more particularly described in the — Schedule hereto and delineated on the plan drawn on these presents and thereon coloured —, TOGETHER with the farmhouse known as — and the cottages and other buildings erected thereon or on part thereof.

[EXCEPT AND RESERVED in fee simple out of this conveyance to the Vendor and the persons deriving title under him [and his successors in title (*l*)]. ALL mines, minerals, and mineral (*m*) substances in, under, or upon the hereditaments hereby conveyed, TOGETHER with full power for the Vendor and [his successors in title and (*l*)] the persons deriving title under him [*or them* (*l*)] to such mines, minerals, and mineral substances, to work and get the same [either by entry on the surface or] by underground workings [only] and without any obligation to leave any subjacent or lateral support for the surface or any buildings for the time being erected thereon or any adjoining minerals, and for the purpose of such workings from time to time or at any time [with or without horses, carts, waggons, machinery, and other implements, materials and things, to enter upon and use the surface and sink pits and] to do all [other] acts and things necessary or proper for working or getting such mines, minerals, and mineral substances, but so nevertheless that [nothing herein contained shall confer on the Vendor any right to enter on the surface and that] proper compensation shall be paid to the Purchaser or other the owner for the time being of the surface in respect of any damage to the surface or to any buildings thereon by reason of the exercise of the powers and rights reserved as aforesaid, and the amount of such compensation in case of dispute shall be settled by the arbitration of two arbitrators, or their umpire, pursuant to the provisions

As to what plans are admissible as evidence, see *Trafford v. St. Faith's Rural Council* (1910), 74 J. P. 297; *Frost v. Richardson* (1910), 103 L. T. 22; *R. v. Norfolk Co. Council* (1910), 26 T. L. R. 289.

(*l*) These words in square brackets will be added where the vendor is a tenant for life, see, S. L. Act, 1882, ss. 4 (6) and 17, and S. L. Act, 1890, s. 5, and *cf.* T. Act, 1893, s. 41; T. Act, 1894, s. 3.

Reservation of  
mines and  
minerals.

(*m*) A reservation of "all mines and veins of coal in or under" land has been held to authorise the construction of underground roads for carrying coal along strata which did not actually form part of a seam: *Batten Pool v. Kennedy*, 1907, 1 Ch. 256; 76 L. J. Ch. 162.

of the Arbitration Act, 1889, or any statutory modification thereof (*o*).]

ALL THOSE pieces of land situated in the Parish of —, in the County of —, containing in the whole —a. —r. —p. or thereabouts, TOGETHER with the buildings thereon known as —, and more particularly delineated on the plan drawn on these presents and thereon coloured — [(*p*) and numbered — on the plan and book of reference deposited under the provisions of the said Act of 19—] [(*q*) being part of the hereditaments registered under the Land Transfer Acts 1875 and 1897, under the heading District —, Parish —, Title No. —].

ALL THAT strip of land situated in the Parish of —, in the County of —, containing —a. —r. —p. or thereabouts, and more particularly delineated on the plan drawn on these presents and thereon coloured — and numbered — on the plan and books of reference deposited under the provisions of the said — Act of 19—, TOGETHER with the mines and minerals within or under the same (*r*).

ALL THAT piece of land situated in the Parish of —, in the County of —, with the messuage and other buildings thereon [formerly known as — Cottage, but now] known as — (*number*) — Street, and more particularly delineated on the plan drawn on these presents and thereon coloured —.

FIRST, ALL THAT piece of land situated in the Parish of —, in the County of —, on the north side of a new road or street now being constructed and called or intended to be called — Road, and which piece of land is more particularly delineated on

(*o*) Unless the conveyance is made to the use that the Vendor, his heirs, and assigns shall have the reserved rights and subject thereto to the use of the purchaser, this reservation will take effect as a re-grant; in that case the conveyance should be executed in duplicate by the purchaser, see, *Wickham v. Hawker* (1840), 7 M. & W. 63; 10 L. J. Ex. 153; *May v. Bellville*, 1905, 2 Ch. 605; 74 L. J. Ch. 678. Where this Form is used in a conveyance to a railway company, see the second note to Prec. XV. of Agreements for Sale, p. 267, *sup*.

(*p*) Where the land is taken under compulsory powers the special Act authorising the purchase will be referred to in the recitals.

(*q*) The conveyance will contain a recital that the vendor is the registered proprietor under the L. T. Acts, 1875 and 1897; these parcels are only for use when the conveyance is for some reason taken off the register under L. T. Act, 1875, s. 49.

(*r*) Unless expressly mentioned, mines and minerals do not pass in a conveyance to a railway company: Railways Clauses Act, 1845, s. 77.

No. 3.

Freehold land and buildings. Variation where the land is taken under statutory powers, and where the land has been registered under the L. T. Acts, 1875 and 1897.

No. 4.

Land conveyed to a Railway Company, where minerals are intended to pass.

No. 5.

A messuage. Variation where former and modern descriptions differ.

No. 6.

A plot of land with a house recently erected, and with a right of way in common with occupiers of other houses.

the plan (*s*) drawn on these presents and thereon coloured —, TOGETHER with the messuage lately erected thereon and known as or intended to be known as — (*number*) — Road aforesaid.

Right of way,  
when granted  
*de novo*.

AND SECONDLY, full right and liberty for the Purchaser, his heirs and assigns, and all persons authorised by him (*t*), in common with the owners and occupiers of the other messuages and premises adjoining the said road, to pass and repass over and along the said road, either with or without horses, carts, carriages, motor-cars and other vehicles, at all times and for all purposes, but subject to the liability of the Purchaser and the persons deriving title under him to pay a rateable proportion with the other owners and occupiers aforesaid of the expense of keeping the said road in repair (*u*) until the same is taken over by the local authority, such proportion to be fixed by the Vendor's surveyor, whose decision shall be final.

#### No. 7.

A right of way,  
when granted  
*de novo*.

FULL right and liberty for the Purchaser, his heirs and assigns, owners for the time being of the land coloured — on the plan hereto, and all other persons authorised by him (*t*) or them from time to time and at all times hereafter and for all purposes, to pass and repass with or without horses, cattle, carts, carriages, motor-cars and other vehicles over and along the road coloured — on the plan hereto (*y*).

Rights inci-  
dent to right  
of way.

(*s*) The plan will show the measurements and the boundaries.

(*t*) A right of way extends to all the licensees of the grantee lawfully going to and from the dominant tenement: *Barcadale v. North Lambeth, &c.* (1902, 2 Ch. 427; 71 L. J. Ch. 806. A grant to a person and his "visitors," &c., has been held to include pupils at his school: *Thornton v. Little* (1907), W. N. 68. The grantee has a right to enter upon the servient tenement for the purpose of making a proper road and repairing it: *Newcomen v. Coulson* (1877), 5 Ch. D. 133; 46 L. J. Ch. 459. The grantor is under no liability to do so; if the grantee wants the repairs done, he must do them himself: *per* Coleridge, J., in *Duncan v. Louch* (1845), 6 Q. B. 909; 14 L. J. Q. B. 187.

(*u*) Where a right of way is already appurtenant and it is desired to refer to it the parcels will run: —

Parcels of  
right of way,  
when appur-  
tenant.

TOGETHER with the right for the Purchaser, his heirs and assigns, in common with the other persons entitled thereto, at all times hereafter to pass and repass, &c.

Notice of  
grant of right.

Where a vendor grants a right over land retained by him, then it is desirable that notice of the grant of the right be indorsed or annexed to a title deed relating to the common title and retained by the vendor.

(*y*) The position of the road should be carefully defined, see, *Dracon v. S. E. Ry. Co.* (1889), 61 L. T. 377.

ALL SUCH easements, rights, and privileges as shall be necessary or proper for enabling the Purchaser and the persons deriving title under him to — (set out here the purposes which the easements are to serve).

No. 8.  
Easements, rights, and privileges generally.

FIRST (z), ALL THAT the manor or lordship or reputed manor or lordship of —, in the County of —.

No. 9.

SECONDLY, ALL THAT the capital messuage or mansion house called —, in the Parish of —, in the County of —.

A manor.  
Mansion house.

THIRDLY, ALL THOSE the advowsons, donations, and rights of patronage or presentation of and to the several Churches of —.

Advowsons and rights of presentation.

FOURTHLY, ALL THAT the impropriate rectory of — and all rent-charges now payable or which shall from time to time become payable in lieu of the rectorial tithes issuing out of or payable in respect of all the messuages, lands, and hereditaments in the Parishes of —.

Impropriate rectory and tithe rent-charge.

AND FIFTHLY, ALL THE messuages, farms, lands and hereditaments, situated in the Parishes of —, or one of them, in the County of —, and more particularly described in the Schedule hereto and delineated on the plan drawn on these presents and thereon coloured —.

Lands described in a schedule.

ALL THE hereditaments described in the — Schedule hereto.

No. 10.

ALL THAT allotment or piece of land, numbered — on the map annexed to the award of the valuer dated the — day of —, and made in the matter of the inclosure of — Common, in the Parish of S—, and containing —a. —r. —p., or thereabouts, which was allotted and awarded in respect of the hereditaments lastly hereinbefore described under the Inclosure Acts.

Short form by reference to schedule.

No. 11.

Allotment.

ALL SUCH rights or equities (if any) as may now be vested in the Vendor in ALL THOSE hereditaments — (a).

No. 12.

An equity to freehold land.

ALL THAT moiety devised by the recited Will of —, deceased, in ALL THOSE, &c.

No. 13.

A moiety of freehold land.

(z) This Form gives the order in which the several rights and interests are generally described when they are disposed of by the same instrument.

(a) This Form may be useful where an allottee of a plot under an Inclosure Award is disposing of it before it is actually conveyed to him, or where no covenants for title are to be implied.

No. 14. ALL THAT piece of land covered by water situated in the Parish of —, in the County of —, and known as — Lake, and more particularly delineated on the plan drawn on these presents and thereon coloured —.

A lake or pool.

No. 15. ALL AND SINGULAR the [land, manufactories, mills, buildings, boiler-house, erections, and] hereditaments mentioned in the first part of the Schedule hereto and delineated on the plan drawn on these presents and thereon coloured —, TOGETHER with the fixed machinery and plant mentioned in the second part of the said Schedule (b).

Manufactory  
with fixed  
machinery  
and plant.

No. 16. ALL THAT the tithe commutation rent-charge, or yearly sum of £—, in lieu of the great or rectorial tithes, arising or issuing out of lands containing —a. —r. —p., or thereabouts, in the Parish of L—, in the County of —, payable by virtue of an award dated the — day of —, and duly confirmed by the Tithe Commissioners for England and Wales on the — day of —, subject nevertheless to variation in accordance with the provisions of the Tithe Acts, 1836 to 1891.

Tithe rent-charge.

No. 17. ALL THAT (*parcels as described in the court rolls*) (c). To all which hereditaments the Vendor was admitted tenant at a court held in and for the said manor on the — day of — or [was admitted tenant out of court on the — day of —].

Copyholds.

Fixtures and  
movable plant.

(b) When a manufactory is sold, with the machinery and plant both fixed and movable, the fixed plant passes with the land, but it is sometimes advisable to describe it in a schedule for the purpose of identification. This does not make the deed a bill of sale within the Bills of Sale Acts: *Re Brooke*, 1894, 2 Ch. 600; 64 L. J. Ch. 21. As regards the movable plant, capable of passing by delivery, there should be a separate price for it; and a receipt for such price, with an inventory annexed, should be given by the vendor for it after the plant is delivered, see Stamp Act, 1891, s. 8 (1).

Stamp on  
purchase under  
statutory  
power.

S. 12 of the Fin. Act, 1895, applies to personal as well as to real property; hence a purchaser under statutory authority of land and goods must produce to the Inland Revenue a conveyance of the goods as well as of the land and pay *ad valorem* duty on the whole property: *Highamore*, 2nd ed., 261; *Eastbourne Corpn. v. A.-G.*, 1904, A. C. 155; 73 L. J. K. B. 259.

(c) For the purposes of a Surrender or Admission the description on the court rolls is followed, though the steward will generally be well advised to permit a modern description to be added to identify the land. In a Covenant to Surrender the best description available is generally used.

FIRST, ALL SUCH parts as are of freehold tenure of the hereditaments described in the ——— Schedule hereto.

AND SECONDLY, ALL SUCH parts as are of copyhold or customary tenure of the hereditaments described in the ——— Schedule hereto (*d*) and to which ——— was on the ——— day of ——— admitted tenant.

ALL THE premises comprised in and demised by the recited Lease.

ALL THE premises respectively comprised in and demised by the several Leases mentioned in the ——— Schedule hereto.

PROVIDED ALWAYS, that section six of the Conveyancing and Law of Property Act, 1881, shall be read and have effect with reference to these presents as if in sub-section (1) [*or if the land conveyed has houses or other buildings thereon* in sub-sections (1) and (2) respectively] all the words between “whatsoever” and “appurtenant” were omitted therefrom (*e*).

ALL THAT policy of assurance effected in the name of ——— and on his own life for the sum of £—— with the ——— Insurance Company dated the ——— day of ———, numbered ———, and at the annual premium of £—— and the said sum of £—— and all other money to become payable thereunder and the full benefit of the said policy (*f*).

(*d*) The latter part of this Form will form the parcels in the covenant to surrender or in the bargain and sale, and should not be placed in the same operative part as relates to the conveyance of the freeholds unless the copyholds are conveyed by a tenant for life under S. L. Act, 1882, s. 20.

(*e*) General words are now implied in every conveyance: Conv. Act, 1881, s. 6. Hence, if by the contract the vendor is entitled to have the general words restricted to rights legally appurtenant to the land, the above provision should follow the habendum. In the case of *Re Peck and The London Sch. Bd.*, 1893, 2 Ch. 315; 62 L. J. Ch. 598, a contract for sale of land “with the appurtenances” was held to entitle the purchaser, in his conveyance, to such general words only as he would have been entitled before the Conv. Act, 1881, and to have the operation of s. 6 limited accordingly, see also *Re Hughes and Ashley*, 1900, 2 Ch. 595; 69 L. J. Ch. 741.

(*f*) Where there are several policies they should be described in a schedule, and the parcels will be:—

“All those ——— policies mentioned in the ——— Schedule hereto

No. 18.

Freeholds and copyholds intermixed, where they cannot be distinguished

No. 19.

On assignment or sub-demise of a Lease.

No. 20.

The same where there are several Leases.

No. 21.

General words. Restriction on the effect of s. 6 of the Conv. Act, 1881.

No. 22.

Life Assurance policy. Variation for several policies.

General words.

Several policies.

No. 23.

Reversionary share in personalty.

ALL THAT the — share to which the Vendor is now under the recited Settlement [Will of the said —, deceased] entitled expectant upon the death of the said — as aforesaid in the investments mentioned in the — Schedule hereto or the varied investments for the time being representing the same, or [in the proceeds of sale of the hereditaments mentioned in the — Schedule hereto], or [in the residuary estate of the said —].

Where accruing shares are to be included.

[AND ALL other (if any) the shares or interests as well original as accruing or to accrue of the Vendor in the property for the time being subject to the trusts of the recited Settlement [*or* Will].]

No. 24.

Life interest in personalty.

ALL THAT the annual income to arise during the life of the said — from the investments mentioned in the — Schedule hereto or the varied investments for the time being representing the same, and all other (if any) the annual income to which the said — is now or may become entitled under the trusts of the recited Settlement [*or* Will].

SECTION III.

Miscellaneous Forms.

No. 1.

Proviso restricting

PROVIDED ALWAYS, that so far as regards the reversion or remainder expectant on the life estate of the Vendor [*tenant for* — — — — —] and the several sums thereby secured, and all other money to become payable thereunder and the full benefit of the said policies.”

The form of schedule will be : —

THE — — SCHEDULE ABOVE REFERRED TO,

Particulars of policies effected in the name and on the life of — hereby assigned.

| Insurance Office. | No. of Policy. | Annual Premium. | Amount secured exclusive of Bonus. |
|-------------------|----------------|-----------------|------------------------------------|
|                   |                |                 |                                    |

*life*] in the premises hereby conveyed, and the title thereto and further assurance thereof after his death, the statutory covenant by him implied in these presents shall not extend to the acts or defaults of any person other than and besides himself and persons deriving title under him (*g*).

the implied covenants for title by a tenant for life.

PROVIDED ALWAYS, that so far as regards the life estate of the said — (*tenant for life*) in the premises hereby conveyed and the title thereto and the further assurance thereof during his life, the statutory covenant by the said — (*remainderman*) implied in these presents shall not extend to the acts or defaults of any person other than and besides the said — (*remainderman*) and his own heirs and persons claiming or to claim under or in trust for him, them, or any of them (*h*).

No. 2.

Proviso restricting the implied covenants by a remainderman.

PROVIDED ALWAYS, that the statutory covenant implied in these presents by reason of the said — being expressed to convey or surrender As Beneficial Owner shall have effect as if clause (B) had been omitted from section seven (1) of the Conveyancing and Law of Property Act, 1881 (*i*).

No. 3.

Provision cutting down the implied statutory covenants on the surrender of a Lease.

PROVIDED ALWAYS, that for the purposes of the covenants implied in these presents under section seven (1) (a) of the Conveyancing and Law of Property Act, 1881, by reason of the Vendor being expressed to convey As Beneficial Owner, that section shall be read and have effect as if the sentence commencing with the words “notwithstanding anything by the person who so conveys” and ending with the words “knowingly suffered” had been omitted and as if the words “notwithstanding anything as

No. 4.

Provision for converting Vendor's implied covenants for title into absolute covenants.

(*g*) It is the practice to restrict the covenants for title, implied by s. 7 of the Conv. Act, 1881, in this manner, see Part, 7th ed., 571; Wolst. Conv. Acts, 9th ed., 42, 43.

(*h*) In a conveyance by a tenant for life and remainderman, if both convey as beneficial owners, joint and several covenants for title will be implied. Hence the necessity for this restricting proviso, see Wolst. Conv. Acts, 9th ed., 33, 34. Title should not, however, be made in this way if there are S. L. Act trustees, for it would let in claims for death duties.

Covenants in conveyance by tenant for life and remainderman.

(*i*) Inasmuch as the person entitled to the reversion expectant on the determination of the lease will be acquainted with the matters mentioned in clause (B) of s. 7 (1) of the Conv. Act, 1881, this provision should be used on the surrender of a lease: Wolst. Conv. Acts, 9th ed., 38.

aforesaid" and the words "otherwise than by purchase for value" had also been omitted wherever those words occur (*k*).

## No. 5.

Covenant by  
Purchaser of  
leaseholds to  
pay rent, &c.

THE Purchaser[s] hereby (*l*) covenant[s] with the Vendor[s] and with each of them] (*m*) that the Purchaser[s] or the persons deriving title under him [them] will henceforth from time to time duly pay all rent becoming due under the said Lease, and observe and perform all the covenants and conditions therein contained, and henceforth on the part of the Lessee[s] to be observed or performed, And also will at all times hereafter save harmless and keep indemnified the Vendor[s] and his [their] estate and effects from and against all proceedings, costs, claims, and expenses on account of any omission to pay the said rent or any breach of any of the said covenants and conditions (*n*).

Guarantee of  
title.

(*k*) Where there is a defect in the title occurring before the last purchase for value, it is sometimes arranged that the covenant shall be made absolute, thus giving a guarantee of title and obviating the necessity for a separate deed of indemnity.

Heirs, executors, &c., of  
covenantor  
omitted.

(*l*) The heirs, executors, and administrators of the covenantor are bound without being mentioned, the heirs by Conv. Act, 1881, s. 59, and the executors or administrators by the common law: Wms. Exors., 10th ed., 1346. The assigns of the covenantor are not mentioned in this and similar covenants, because they are personal covenants. The mention of the assigns of the covenantor has no force, except in real covenants, the burden of which is intended to be thrown on the assignee of the land: see Wolst. Conv. Acts, 9th ed., 123, 124.

Heirs, executors, &c., of  
covenantee  
omitted.

(*m*) This covenant is by Conv. Act, 1881, s. 58 (2), deemed to be made with the executors, administrators, and assigns of the covenantee. Where the covenant relates to lands of inheritance, it is deemed to be made with the heirs and assigns of the covenantee: sub-s. 1; but it is best to define the land with which the benefit of the covenant is intended to run: *Rogers v. Hosegood*, 1900, 2 Ch. 388; 69 L. J. Ch. 652; and generally on this section, see Wolst. Conv. Acts, 9th ed., 123. Covenantee includes covenantees: see Interpretation Act, 1889, s. 1. The assignee of a personal covenant can now sue on the covenant: Jud. Act, 1873, s. 25 (6).

By Conv. Act, 1881, s. 60, a covenant with two or more jointly includes an obligation for the benefit of the survivor or survivors, and any other person to whom the right to sue on the covenant devolves; therefore it is unnecessary to mention the survivors or survivor.

Right of  
vendor to  
indemnity.

(*n*) Where the vendor is under liability he is entitled, apart from express stipulation, to a covenant of indemnity: *Re Poole and Clarke*, 1904, 2 Ch. 173; 73 L. J. Ch. 612.

Wording of  
the covenant.

As to the wording of the covenant, see *Re Poole and Clarke*, *sup.*; see also *Gooch v. Clutterbuck*, 1899, 2 Q. B. 148; 68 L. J. Q. B. 808, where the

THE Vendor[s] hereby acknowledge[s] the right of the Purchaser[s] [and each of them] to production of the documents mentioned in the — Schedule hereto [or of the recited Indenture of —], and to delivery of copies thereof (*o*).

AND hereby undertake[s] for the safe custody thereof (*p*).

THE — SCHEDULE ABOVE REFERRED TO (*q*).

Particulars of documents retained in the custody of the Vendor[s].

— 18—. Indenture of Conveyance of this date made between A. B. of the one part, and C. D. of the other part.

— 18—. Deed Poll of this date under the hand and seal of E. F.

THE Vendor hereby covenants with the Purchaser that as soon as the documents mentioned in the — Schedule hereto or any of them shall come into the custody of the Vendor or the persons deriving title under him, by reason of the satisfaction of the said mortgage debt or otherwise, he or they will, at the request and cost of the Purchaser or the persons deriving title under him, give to him or them a statutory undertaking for their safe custody, and that after the said documents or any of them shall have so

covenant to pay rent, &c., was almost in the same wording as the above Form, but the covenant for indemnity read “and from the payment and performance thereof respectively will keep indemnified the vendors,” and it was held that the covenantors were liable for a breach of covenant which had taken place before the assignment.

Under this covenant the vendor cannot enforce by injunction a negative covenant which the assignee undertakes to observe: *Harris v. Boots, Cash Chemists*, 1904, 2 Ch. 376; 73 L. J. Ch. 708.

(*o*) This acknowledgment may safely be given by trustees or mortgagees. As to the obligations imposed by, and the rights under an acknowledgment, see Conv. Act, 1881, s. 9 (1)–(8). When the conveyance is made to uses, the acknowledgment should be in favour of the grantee to uses. Generally as to acknowledgments and undertakings, see Wolst. Conv. Acts, 9th ed., 46–52. It is often convenient to take the acknowledgment separately under a *6d.* agreement stamp.

(*p*) As to the obligations imposed by and the rights under an undertaking, see Conv. Act, 1881, s. 9 (9)–(11). Trustees and mortgagees should not give the undertaking: see Wolst. Conv. Acts, 9th ed., 50.

(*q*) In this schedule it is the practice to refer merely to the names of the parties to the deeds without prefixing “the said,” though they have been referred to earlier.

No. 6.

Acknowledgment of right to production.

Undertaking for safe custody.

Schedule of documents.

No. 7.

Covenant by mortgagor to give undertaking for safe custody when documents come into his custody.

Vendor's rights under the covenant.

Acknowledgment to grantee to uses.

come into custody as aforesaid, and until such undertaking as aforesaid shall be given, the Vendor and the persons deriving title under him shall be subject to the same obligations in all respects as if such undertaking had been given while the said documents were in his or their custody (*r*).

## No. 8.

Covenants by  
Purchaser of  
building land.

(A.) THE Purchaser for himself, his heirs and assigns (*s*), hereby covenants with the Vendor (and so that this covenant shall so far as practicable be enforceable by the owners, occupiers, and tenants for the time being of the said — Estate or the part thereof for the time being remaining unsold) that the Purchaser and the persons deriving title under him will henceforth at all times

Rights of  
purchaser as  
regards deeds  
retained by  
mortgagee.

(*r*) This Form merely supplements the acknowledgment given by the mortgagees of the right of the purchaser to production of the documents. The acknowledgment is generally accepted without the covenant. The rights of a purchaser as regards deeds retained by a mortgagee are as follows:— (1) He may require the vendor to procure from the mortgagee an acknowledgment of the right to production, or if the mortgagee cannot or will not give one, the vendor must enter into a covenant for production for what it is worth: *Re Parsell and Deakin* (1893), W. N. 152; and see Wolst. Conv. Acts, 9th ed., 51. Whether an unwilling purchaser would be bound to be satisfied with such a covenant is not clear. So long as the mortgage subsists, the covenantor would have the right, under s. 16 of the Conv. Act, 1881, to inspect, and perhaps to authorise the covenantee to inspect, the deeds; but if the mortgagee were to sell the remaining mortgaged property under his power of sale, and deliver the deeds to the purchaser, the covenant would become ineffective. (2) If the mortgagee gives an acknowledgment, but declines to give an undertaking, as would generally be the case, the purchaser could not insist either on an undertaking (which would have no statutory effect), or on a covenant for safe custody from the mortgagee. But he might reasonably ask the mortgagee to enter into such a covenant as is inserted in the above Form.

Mortgagee  
liable for loss  
of deeds.

As between mortgagee and mortgagee, the latter is liable in case of the loss or destruction of the documents while in his possession or under his control: *Hornby v. Matcham* (1848), 16 Sim. 325; 17 L. J. Ch. 471; *Brown v. Sewell* (1853), 11 Hare, 49; 22 L. J. Ch. 1063; see also *James v. Rumsey* (1879), 11 Ch. D. 398; 48 L. J. Ch. 345, where the mortgagee was held entitled to an indemnity, but not to compensation; see Dart, 7th ed., 490; and *cf. Gilligan v. National Bank*, 1901, 2 Ir. R. 513.

(*s*) See Wolst. Conv. Acts, 9th ed., 123, as to the necessity for these words.

Notice of  
restrictive  
covenants.

Where a vendor enters into restrictive covenants or grants an easement over the land retained, then it is desirable that notice of the covenant or rights be indorsed on or annexed to a common title deed retained by the vendor.

hereafter observe and perform all and singular the restrictions and stipulations contained in the — Schedule hereto (*t*).

(B.) [PROVIDED ALWAYS, that the Vendor, his heirs and assigns, owners for the time being of the part of the said — Estate for the time being remaining unsold or otherwise undisposed of, may at the request of the Purchaser or the persons deriving title under him release or vary any of the aforesaid restrictions or stipulations, and so that nothing herein contained shall operate to impose any restrictions on the manner in which the Vendor or the persons deriving title under him may deal with the whole or any part of the said Estate for the time being remaining unsold or undisposed of or be otherwise deemed to create a building scheme for the said Estate or any part thereof (*u*).]

[Power to release covenants and vary building scheme.]

(C.) [PROVIDED ALSO, that the Purchaser or other the owners for the time being of the premises hereby conveyed shall as regards any of the aforesaid covenants which are restrictive of the user of the land be liable only in respect of breaches which occur while he or they shall respectively be owner or owners of the land or any part thereof.]

[Purchaser not to be liable after he has parted with the land.]

A. B., by E. F., his Attorney (*x*).....(L.S.)

No. 9.

<sup>or</sup>  
E. F., Attorney for A. B. (*y*).. .....(L.S.)

Execution by attorney and attestation.

Signed, sealed, and delivered [in the name of and (*z*)] on behalf of the within-named A. B. by E. F., his attorney, under a power of attorney dated the — day of —, 19—, and deposited in the Central Office of the Supreme Court of Judicature (*a*) in the presence of — (*name, address, and description of witness*).

(*t*) The burden of affirmative covenants will not run with the land: *Haywood v. Brunswick Building Society* (1881), 8 Q. B. D. 403; 51 L. J. Q. B. 73; *Re Nisbet and Potts*, 1905, 1 Ch. at p. 397; aff. 1906, 1 Ch. 386; 75 L. J. Ch. 238; and see Dart, 7th ed., 771.

Affirmative covenants.

(*u*) This is a power which a purchaser must consider carefully, for unless a building scheme is created his property may be prejudiced. And see notes to "Special Conditions," Form No. 126, p. 192, *sup*.

(*x*) It is not necessary to state in the body of the deed that it will be executed by attorney, and the deed will be in the same form as if it were executed by the vendor personally. See 51 Sol. J. 148 as to joint attorneys.

Powers of attorney.

(*y*) See Conv. Act, 1881, s. 46.

(*z*) These words will be omitted if the attorney signs in his own name under s. 46.

(*a*) Generally as to powers of attorney, see Wolst. Conv. Acts, 9th ed., 114–117 and 159–162.

No. 10.

Memorandum  
of acknow-  
ledgment of a  
deed by a  
married  
woman (b).

THIS DEED was this day produced before me and acknowledged by E. B. therein named to be her act and deed, previous to which acknowledgment the said E. B. was examined by me separately and apart from her husband touching her knowledge of the contents of the said Deed and her consent thereto and declared the same to be freely and voluntarily executed by her.

*(Add, if the acknowledgment is taken by any person other than a Judge.)*

And I declare that I am not interested or concerned either as a party or as a solicitor or clerk to the solicitor for one of the parties or otherwise in the transaction giving occasion for the said acknowledgment.

(Signed) A. B.

A Judge of the High Court of Justice in England,  
or a Judge of the County Court of —,  
or a perpetual Commissioner for taking acknowledgments  
of deeds by married women,  
or the special Commissioner appointed to take the afore-  
said acknowledgment.

Rules to be  
observed in  
taking  
acknowledg-  
ments.

(b) The rules made in December, 1882, under the Fines and Recoveries Act, 1833, provide that before a commissioner receives an acknowledgment, he must inquire of the married woman separately and apart from her husband and from the solicitor concerned in the transaction whether she intends to give up her interest in the estate to be passed by the deed without having any provision made for her; and where the married woman answers in the affirmative and the commissioner has no reason to doubt the truth of her answer, he is to receive the acknowledgment; but if it appears to him that it is intended that provision is to be made for the married woman, then the commissioner must not take her acknowledgment until he is satisfied that such provision has been actually made by some deed or writing produced to him; or if such provision has not actually been made before, then the commissioner is to require the terms of the intended provision to be shortly reduced into writing, and to verify the same by his signature in the margin, at the foot, or at the back thereof. S. 7 of the Conv. Act, 1882, varies the requirements of the Fines and Recoveries Act by (1) substituting one perpetual or special commissioner for two, and (2) making a memorandum of acknowledgment indorsed on the deed sufficient without the filing of any separate certificate. The statutory provisions override local customs: *Johnson v. Clark*, 1908, 1 Ch. 303; 77 L. J. Ch. 127. An acknowledgment by a married woman must be made before a Judge of the High Court or of a County Court, or before a perpetual commissioner appointed by the Lord Chief Justice of England, or before a special commissioner appointed by the Court in cases where by reason of residence beyond seas or ill-health

IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £500 (*c*).

AND the Purchaser hereby covenants with the Vendor to repay to him or the persons deriving title under him on demand all money which may be expended by him or them in discharging any increment value duty which under the provisions of the Finance (1909-10) Act, 1910, or any Act amending the same may become payable in respect of the premises hereby conveyed by reason of these presents and the sale hereby effected and in discharging the costs of and incidental to the payment of such duty (if any) and the assessment thereof, and the Purchaser or the persons deriving title under him will at all times hereafter save harmless and keep indemnified the Vendor and his estate and effects from and against all claims and demands in respect of the said duty and costs and will produce to the Commissioners of Inland Revenue free of expense any documents which may be required in connexion with the assessment of the said duty, and that the premises hereby conveyed shall stand charged with the payment of all money (if any) becoming payable under the foregoing covenant with interest thereon at the rate of £4 per cent. per annum from the date of demand.

## No. 11.

Declaration under s. 73 of the Fin. (1909-10) Act 1910, where purchase-money does not exceed £500.

## No. 12.

Covenant by Purchaser to pay increment value duty.

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or any other sufficient cause, she is prevented from making her acknowledgment in the ordinary way: F. & R. Act, 1833, ss. 79, 83; County Courts Act, 1888, s. 184.

(*c*) Every conveyance where the purchase-money does not exceed £500, and which does not form part of a larger transaction, should contain this declaration to avoid the double duties imposed by the Act. Although the stamp duties have been doubled by s. 75, a similar exemption is not expressly allowed by the Act in respect of leases where a premium not exceeding £500 is paid.

## PART II.

### PRECEDENTS OF PURCHASE DEEDS (a).

#### SECTION I.—CONVEYANCES ARRANGED ACCORDING TO THE CHARACTER OF THE CONVEYING PARTIES.

##### GROUP A.—CONVEYANCES ON SALES BY ABSOLUTE OWNERS.

###### No. I.

CONVEYANCE *of* FREEHOLDS. VARIATIONS *where there is a subsisting LEASE; also where RESTRICTIVE COVENANTS are imposed.*

Parties. THIS INDENTURE, made the — day of — 19—, BETWEEN A. B., of —, in the County of —, Esqre. (hereinafter called the Vendor), of the one part and C. D., of —, in the County of —, Esqre. (hereinafter called the Purchaser), of the other part :

Recital of seisin and agreement for sale. WHEREAS the Vendor is now seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described [subject to and with the benefit of the lease mentioned in the — Schedule hereto] and has agreed to sell the same to the Purchaser for the like estate in possession free from incumbrances at the price of £—— (b) :

Forms referred to. (a) The forms referred to in these Precedents are the Forms in Division II. Part I., Sects. I., II., and III., *e.g.*, *Form No. 3, Sect. I.*, means the form of recital numbered 3 in Sect. I. of Forms in Purchase Deeds. See List of Forms, p. 288, *sup.*

Increment value duty stamps. Where a contract has been stamped for the purposes of increment value duty it should be seen that the conveyance is stamped with a denoting stamp, see Fin. (1909-10) Act, 1910, s. 4 (7). If this is not done the contract will be brought on the title, as otherwise it cannot be shown that the conveyance is properly stamped.

Form where no recitals are employed. (b) See Form No. 1, Sect. I., *sup.* It is desirable to have a recital of seisin, *cf. Bolton v. L. S. Bd.* (1878), 7 Ch. D. 766; 47 L. J. Ch. 461; *quære* this decision, see, *Re Wallis and Groat*, 1906, 2 Ch. 206; 75 L. J. Ch. 519; but in small matters recitals are sometimes dispensed with; in this case the operative part will be : —

WITNESSETH, that in consideration of the sum of £—— now paid by the Purchaser to the Vendor for the purchase of the

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £ — (c) [on or before the execution of these presents (d)] paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges) the Vendor, As Beneficial Owner hereby, conveys unto the Purchaser (e)

Conveyance to Purchaser in fee-simple.

ALL, &c. (*see Forms in Sect. II., sup.*).

Parcels.

To HOLD Unto and To the Use of the Purchaser in fee simple (f) [subject to and with the benefit of the Lease mentioned in the [first] Schedule hereto] (g).

Subject to a lease.

[And (g) the Purchaser for himself, his heirs and assigns, hereby covenants with the Vendor that the Purchaser and the persons deriving title under him will observe and perform the stipulations and conditions following [or contained in the — Schedule hereto].

Restrictive covenant.

(Add the particular restrictions either here or in a schedule, see *Special Conditions of Sale, Form No. 126, p. 192, sup.*)

hereditaments hereinafter described in fee simple in possession free from incumbrances (the receipt, &c.) (*continue as in text*).

(c) If the consideration does not exceed £500, Form No. 11 of Sect. III., *sup.*, should be used to avoid the double stamp duties: *Fin. (1909-10) Act, 1910, s. 73.*

(d) These words will be used where a deposit has been paid.

(e) Following the Forms in the Fourth Schedule of the *Conv. Act, 1881*, which by s. 57 are declared to be sufficient, the “premises” (*i.e.*, the part preceding the habendum) need not contain words of limitation; the estate to be taken may be defined only in the habendum. This is a return to the original office of the premises. The practice of limiting the estate both in the premises and in the habendum is stated by Sheppard (*Shep. Touchstone*, by Preston, c. V., p. 74) to be improper, though it was formerly adopted; and see *Savill v. Bethell*, 1902, 2 Ch. at p. 540; 71 L. J. Ch. 652.

Quantity estate not defined in the premises.

(f) “Fee simple” is used in these Precedents in accordance with *Conv. Act, 1881, s. 51*. The word “simple” is a necessary part of the limitation: *Re Ethel and Mitchells*, 1901, 1 Ch. 945; 70 L. J. Ch. 498; *Re Ford and Ferguson*, 1906, 1 Ir. R. 607. The word “assigns,” which is sometimes added, is omitted in the Precedents as superfluous. It is not a word of limitation.

Fee-simple.

(g) The conveyance prevents the purchaser from exercising the power of re-entry in the lease for breach of a covenant occurring before the date of sale, see *Hunt v. Bishop* (1853), 8 Ex. 675; 22 L. J. Ex. 337; *Hunt v. Remnant* (1854), 9 Ex. 635; 23 L. J. Ex. 135; *Jenkins v. Jones* (1882), 9 Q. B. D. 128, 131; *cf. Cohen v. Tamar*, 1900, 2 Q. B. 609; 69 L. J. Q. B. 904.

(g) Or use Form No. 8, Sect. III., *sup.*

Acknowledg-  
ment for pro-  
duction and  
undertaking  
for safe  
custody.

[And the Vendor hereby acknowledges the right of the Purchaser to production of [the recited Indenture of (h)] — [the documents mentioned in the [second] Schedule hereto] and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.]

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

Schedule of  
Lease.

[THE [FIRST] SCHEDULE ABOVE REFERRED TO

— 18—. By an Indenture of Lease of this date made between E. F. of the one part and H. K. of the other part the hereditaments hereinbefore conveyed were demised by the said E. F. to the said H. K. for the term of — years from the — day of —, 18—, at the yearly rent of £— and subject to the covenants by the lessee and the conditions therein contained.]

Schedule of  
documents.

[THE [SECOND] SCHEDULE ABOVE REFERRED TO.

Particulars of documents retained in the custody of the Vendor (i).

— 18 —. Indenture of Conveyance of this date, made between — of the one part and — of the other part.

— 18 —. Indenture of, &c.]

Signed, sealed, and delivered by the within named }  
A. B. [and C. D.] in the presence of — (k). }

Acknowledg-  
ment and  
undertaking.

(h) See Form No. 6, Sect. III., *sup.*; if there are several documents, the dates and parties should be set out in a schedule. Of course, if the documents of title are all to be handed over, no acknowledgment or undertaking will be required.

Paragraphs.

If the deed consists of the conveyance, the restrictive covenants, and the acknowledgment it may be divided into clauses, thus—

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of the said agreement (*continue as in text*).
2. The Purchaser for himself (*covenant as in text*).
3. The Vendor hereby acknowledges (*continue the acknowledgment and undertaking as in text*).

(i) This heading renders it unnecessary to state in the deed who has the custody. Whoever has the legal custody must give the acknowledgment.

(k) The name, address, and description of the witness should be given.

It is not necessary for the purchaser to execute, except in cases where he

## No. II.

## CONVEYANCE of FREEHOLDS to a SUB-PURCHASER (I).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c. (*original Purchaser*), of the 2nd part, and E. F., of, &c. (*sub-Purchaser*) (hereinafter called the Purchaser), of the third part :

Parties.

WHEREAS the Vendor is now seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, and has agreed to sell the same to the said C. D. at the price of £1,000 :

Recitals of agreement for sale.

AND WHEREAS the said C. D. has agreed to sell the said hereditaments to the Purchaser at the same price of £1,000 [*or at the price of £1,050 or £950 :*]

Agreement for subsale.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £1,000 paid to the Vendor by the Purchaser at the request of the said C. D. (the receipt of which sum the Vendor hereby acknowledges) [*or in consideration of the sum of £1,000 to the Vendor, and the sum of £50 to the said C. D., paid by the Purchaser, or in consideration of the sum of £950 by the Purchaser, and the sum of £50 by the said C. D. paid to the Vendor (the receipt of which sums the (recipients) hereby respectively acknowledge)*], the Vendor, As Beneficial Owner, at the request of the said C. D. hereby conveys, and the said C. D., As Beneficial Owner, hereby conveys and confirms unto the Purchaser, ALL, &c. (*conveyance to Purchaser in fee simple as in Precedent I.*).

Conveyance by Vendor at request of original Purchaser to Sub-purchaser in fee simple.

IN WITNESS, &c.

enters into a covenant or undertaking in the conveyance or where there is a reservation of an easement not created by way of use. In the latter case the reservation operates as a re-grant by the purchaser: *Wickham v. Hawker*, (1840), 7 M. & W. 63; 10 L. J. Ex. 153; *May v. Belleville*, 1905, 2 Ch. 605; 74 L. J. Ch. 678; and see Dart, 7th ed., 564. The purchaser may nominate the witness: Conv. Act, 1881, s. 8. For execution by attorney, see Form No. 9, Sect. III., *sup.*

Execution by purchaser.

(I) The stamp will be *ad valorem* on the sum paid by the sub-purchaser: Stamp Act, 1891, s. 58 (4), which provides that the conveyance is to be charged in respect of the consideration moving from the sub-purchaser.

Stamp on sub-purchase.

## No. III.

CONVEYANCE *of* FREEHOLD HOUSES *subject to numerous*  
LEASES *at* GROUND RENTS (*m*).

|   |  |
|---|--|
| Parties.  | THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :   |
| Recital of Vendor's seisin, subject to leases.    | WHEREAS the Vendor is now seised in fee simple in possession free from incumbrances of the hereditaments described in the first column of the [first] Schedule hereto, subject to and with the benefit of the several Indentures of Lease mentioned in the second column of the said Schedule, by which Indentures the said hereditaments were demised by the Vendor to the several persons named in the third column of the said Schedule for the several terms of years and at the yearly rents respectively mentioned in the fifth and sixth columns of the said Schedule, and subject to the covenants and conditions in the said Indentures respectively contained and on the lessee's part to be observed and performed :  |
| Agreement for sale.                               | AND WHEREAS the Vendor has agreed to sell the said hereditaments to the Purchaser subject to and with the benefit of the said Leases at the price of £—— :   |
| Conveyance subject to and with benefit of Leases. | NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration, &c. ( <i>as in Precedent I</i> , p. 323), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser, ALL THOSE pieces of land and hereditaments situated in the Parish of ——, in the County of ——, containing in the whole —a. —r. —p. or thereabouts, and described in the first column of the [first] Schedule hereto, and all other (if any) the hereditaments comprised in the several Indentures of Lease mentioned in that Schedule, TOGETHER with the messuages and other buildings erected thereon or on parts thereof, which premises are delineated on the plan drawn on these presents and thereon coloured —— : |
| Habendum.   | TO HOLD unto and to the use of the Purchaser in fee simple, subject to and with the benefit of the said Indentures of Lease and the rents thereby respectively reserved, and the covenants and conditions therein respectively contained, and on the part of the respective lessees to be observed and performed   |
| Reversion duty.                                   | ( <i>m</i> ) See exemptions from reversion duty where the reversion was purchased before the 30th April, 1909, and the lease determines within forty years of the date of purchase, Fin. (1909-10) Act, 1910, s. 14.   |

(Acknowledgment, &c., as to documents, if necessary, Form No. 6, Sect. III. Add Form No. 11, Sect. III., if the purchase-money is £500 or less.

IN WITNESS, &c.

THE [FIRST] SCHEDULE ABOVE REFERRED TO.

| Description of Property.  | Date of Lease. | Name of Original Lessee. | Present Lessee. | Term.               | Rent. |
|---|----------------|--------------------------|-----------------|---------------------|-------|
| 1. All that piece of ground, &c. ( <i>short description from the Lease</i> ), and the messuage erected thereon, now known as, &c. | — 18 —         | X. Y.                    | G. H.           | 99 years, from, &c. | £ —   |
| 2. All that, &c.  | — 19 —         | Y. Z.                    | J. K.           | 99 years, from, &c. | £ —   |

[THE SECOND SCHEDULE ABOVE REFERRED TO.

Particulars of documents retained in the custody of the Vendor.]

No. IV.

CONVEYANCE of a FREEHOLD REVERSION EXPECTANT on a LEASE to the LESSEE who PURCHASES under an OPTION (n) to PURCHASE given by the LEASE.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part:

Parties.

WHEREAS the Vendor is now seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, subject to and with the benefit of the Lease mentioned in the Schedule hereto, under which Lease the Purchaser has an option to purchase the freehold reversion expectant on the determination of the term thereby granted at the price of £——:

Seisin subject to option.

AND WHEREAS the Purchaser has signified to the Vendor his desire to purchase the reversion and inheritance in fee simple of the hereditaments comprised in the said Lease expectant on the term thereby granted at the said price of £——:

That Lessee has signified his desire to purchase.

(n) The option to purchase must not infringe the rule against perpetuities: *Woodall v. Clifton*, 1905, 2 Ch. 257; 74 L. J. Ch. 555; *Worthing Corp'n. v. Heather*, 1906, 2 Ch. 532; 75 L. J. Ch. 761.

Option to purchase must not infringe perpetuity rule

Conveyance of reversion to Lessee in fee. NOW THIS INDENTURE WITNESSETH that pursuant to the provision for this purpose contained in the said Lease, and in consideration, &c. (*as in Precedent I., p. 323, sup.*), the Vendor, As Beneficial Owner, hereby conveys and releases unto the Purchaser, ALL, &c. (*the parcels will follow the parcels in the Lease*):

Habendum. To HOLD unto and to the use of the Purchaser in fee simple, To THE intent that the term of — years granted by the said Lease may forthwith merge and be extinguished in the freehold reversion and inheritance.

Covenant to pay reversion duty. [AND the Purchaser hereby covenants with the Vendor to repay to him on demand all money which may be expended by him in discharging any reversion duty which under the Finance (1909-10) Act, 1910, or otherwise may become payable by reason of the determination of the said term and the costs of paying the same, and at all times hereafter to keep indemnified the Vendor and his estate and effects from all claims in respect of such reversion duty and costs (*nn*)] (*Acknowledgment, &c., as to documents, if necessary, Form No. 6, Sect. III.*).

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Particulars of the Lease above referred to.

— 18 —. By an Indenture of Lease of this date (*recite Lease and the option to purchase*).

No. V.

DEED of COVENANT BY TENANT on the ROLLS to surrender COPYHOLD LAND on a SALE.

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor, of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Recital of Vendor's title. WHEREAS the Vendor is now seised of the hereditaments hereinafter covenanted to be surrendered, being copyhold of the Manor of —, in the County of —, for an estate of inheritance according to the custom of the said manor, and he has agreed to sell the same to the Purchaser at the price of £— :

Vendor covenants to surrender. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration, &c. (*as in Precedent I.,*

(*nn*) The Vendor would not be entitled to this covenant unless the option provided for it,

p. 323, *sup.*), the Vendor, As Beneficial Owner (*o*), hereby covenants with the Purchaser, that the Vendor and all other necessary parties (if any) will forthwith, at the cost of the Purchaser, surrender into the hands of the lord of the said Manor, according to the custom thereof, ALL, &c. (*parcels*) (to which hereditaments the Vendor was admitted on the — day of —),

copyholds to  
Purchaser in  
fee.

To THE USE of the Purchaser and his heirs (*p*), at the will of the lord, according to the custom of the said Manor, at and under the rents, fines, heriots, suits and services therefor due and of right accustomed (*Acknowledgment, &c., as to documents, if necessary, Form No. 6, Sect. III., sup.*).

IN WITNESS, &c. (*q*).

## No. VI.

### SURRENDER *out of* COURT of COPYHOLDS to a PURCHASER by the TENANT of the CUSTOMARY FEE SIMPLE.

The MANOR of —, ) BE IT REMEMBERED, that on  
in the County of — } the — day of —, 19 —, A. B., of,  
&c. (*Vendor*), came before L. M., of, &c., steward of the Manor  
out of court, and in consideration of the sum of £— to  
him paid (*r*) by C. D., of, &c. (*Purchaser*), surrendered into the  
hands of the lord of the Manor by the hands and acceptance  
of his said steward, according to the custom of the Manor,  
ALL, &c. (*parcels, see Forms, Part I., Sect. II., sup.*), to which  
hereditaments the said A. B. was admitted on the — day of —,

Consideration.  
Surrender of  
copyholds  
to purchaser  
in fee.

(*o*) S. 2 (v.) of the Conv. Act, 1881, provides that the term “conveyance” shall include “covenant to surrender.” It follows that if the vendor as beneficial owner covenants to surrender, covenants for title will be implied.

Covenants  
for title.

(*p*) The word “heirs” is still necessary in a surrender of copyholds; s. 51 (i.) of the Conv. Act, 1881, applies only to deeds.

(*q*) The stamp will be on the surrender: Stamp Act, 1891, ss. 61 and 65; the commonest mode of making title is by covenant to surrender, followed by surrender, followed by admission.

(*r*) The receipt will be given in the covenant to surrender, see Conv. Act, 1881, ss. 54, 55. Where there is no covenant to surrender the receipt should be given at the foot of the surrender over a penny stamp. The draft surrender is generally prepared by the steward; he should be lent a copy of the covenant to surrender. On enrolment he will issue a “steward’s copy” to the purchaser of the surrender and admission.

Receipt for  
purchase-  
money on sale  
of copyholds.

TO THE USE of the said C. D. and his heirs(s), at the will of the lord, according to the custom of the Manor, at and under the rents, fines, heriots, suits and services therefor due and of right accustomed.

This surrender was taken and accepted the  
day and year first above written by me.

L. M. (*steward*),  
Steward of the Manor.

### No. VII.

#### ADMISSION of PURCHASER to copyholds (*ss*).

MANOR of —, in } The — day of —, 19— :  
the County of — }

Recital of  
surrender.

WHEREAS on the — day of —, 19—, A. B., of, &c., came before the steward of this Manor, and in consideration of the sum of £— paid to him by C. D., of, &c., did out of court surrender into the hands of the lord of this Manor by the hands and acceptance of the said steward, by the rod, according to the custom of this Manor, ALL, &c. (*parcels, see Forms, Part I., Sect. II.*) (to which hereditaments the said A. B. was admitted on the — day of —),

TO THE USE of the said C. D. and his heirs according to the custom of this Manor :

Admission to  
copyholds.

NOW BE IT REMEMBERED, that on the day first above written the said C. D. came before L. M., of, &c., the steward of this Manor, out of court, and prayed to be admitted tenant of the hereditaments so surrendered to his use as aforesaid, To which the lord of the Manor by the said steward granted seisin thereof by the rod,

TO HOLD unto the said C. D. and his heirs by copy of court roll at the will of the lord, according to the custom of this Manor, by and under the rents, fines, heriots, suits and services therefor due and of right accustomed :

(s) S. 51 of the Conv. Act, 1881, rendering unnecessary the use of the word "heirs" in the limitation of an estate by the words "in fee simple," only applies to such a limitation in a *deed*.

Assurances  
of customary  
freeholds.

(ss) Customary freeholds generally pass by deed or by deed and admission. This precedent can be adapted to the case of customary freeholds. Instead of a surrender the conveyance will be recited. The words "at the will of the lord" will be omitted. The legal estate is generally in the tenant and not in the lord.

AND so (saving the rights of the lord) the said C. D. is admitted tenant thereof and pays to the lord on such admittance a fine [certain] of £—— and his fealty is respited (*t*).

## No. VIII.

ASSIGNMENT *of* LEASEHOLD HEREDITAMENTS *to a* PURCHASER.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter Parties. called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

WHEREAS by an Indenture of Lease dated the —— day of Recite lease. ——, and made between G. H. of the one part, and the Vendor of the other part, ALL that messuage, &c. (*parcels as described in the lease*) (*u*), were demised unto the Vendor for the term of —— years from the —— day of ——, at the yearly rent of £——, and subject to the covenants by the lessee and the conditions by and in the said Lease reserved and contained ; [*or if the vendor was not the original lessee,*

WHEREAS, &c. (*Recital of Lease as above, substituting L. M. for the Vendor*):

AND WHEREAS, after divers mesne assignments and acts in the Assignment to Vendor. law (*x*), ultimately under an Indenture dated the —— day of ——, and made between ——, the premises became and are now vested in the Vendor for the residue of the term granted by the recited Lease:]

AND WHEREAS the Vendor has agreed to sell the premises Agreement for sale. comprised in the recited Lease free from incumbrances to the Purchaser at the price of £—— :

(*t*) It is usual for the steward of the manor to prepare the admission ; he should issue a steward's copy on enrolment. Sometimes the surrender and admission are prepared in one document.

(*u*) The recital of the lease should state the parcels as they are therein described. If the property at the date of the assignment is known by a different description, or any buildings have been erected on the premises since the lease, so as to require notice, this should be done by way of addition to the old description. Leasehold parcels by reference.

(*x*) This recital must accord with the facts, *e.g.*, there may be no mesne assignments, or the last disposition may be a Will appointing executors.

## NOW THIS INDENTURE WITNESSETH as follows:—

Assignment  
to Purchaser  
for residue of  
term.

1. IN pursuance of the said agreement and in consideration, &c. (as in *Precedent I.*, p. 323, *sup.*), the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser, ALL the premises comprised in and demised by the recited Lease,

Subject to  
rent and  
lessee's  
covenants.

To HOLD unto the Purchaser (*y*), for the residue of the term granted by the recited Lease and at the rent and subject to the lessee's covenants and the conditions by and in the recited Lease reserved and contained and henceforth on the part of the lessee to be paid, observed, and performed [and subject to and with the benefit of the Underleases mentioned in the Schedule hereto].

Covenant by  
Purchaser to  
indemnify  
Vendor against  
rent and cove-  
nants in Lease.

2. THE Purchaser (*z*) hereby covenants with the Vendor that the Purchaser, or the persons deriving title under him, will henceforth from time to time duly pay all rent becoming due under the said Lease, and observe and perform all the covenants and conditions therein contained, and henceforth on the lessee's part to be observed or performed, And also will at all times hereafter save harmless and keep indemnified the Vendor and his estate and effects from and against all proceedings, costs, claims and expenses on account of any omission to pay the said rent or any breach of any of the said covenants and conditions (*a*).

IN WITNESS, &c. (*Add Schedule of Underleases if required*).

In assignment  
of leaseholds,  
words "his  
executors,  
administra-  
tors, and  
assigns" now  
omitted.

(*y*) It was formerly usual, in an assignment of leaseholds and other personal property, to add the words "his executors, administrators, and assigns" after the name of the assignee, not because such words were essential, but by analogy to a limitation of freeholds to "heirs." As the word "heirs" is rendered unnecessary by the Conv. Act, 1881, s. 51, and is accordingly discontinued in this work, the words "his executors, administrators, and assigns" are omitted also.

In covenants  
the words  
"for himself,  
his heirs," &c.,  
no longer  
necessary.

(*z*) See Form No. 5, Sect. III., *sup.*, and notes thereto. The words "for himself, his heirs, executors, and administrators" are unnecessary. They were formerly inserted because specialty debts, where the heir was expressed to be bound, had a priority over other debts in the administration of assets, but this is no longer the case; and by the Conv. Act, 1881, s. 59, it is provided that a covenant, though not expressed to bind the heirs, shall operate to bind the heirs and real estate as well as the executors and administrators of the person making the same as if heirs were expressed.

When pur-  
chaser bound

(*a*) An assignee of a leasehold interest is not liable for the rent and covenants contained in the lease after he has executed an assignment of the lease to another person; so that if the vendor of a leasehold interest is not

the original lessee, but an assignee, or the representative of an assignee, he is not entitled to a covenant from the purchaser for the payment of the rent and the observance of the covenants, unless the vendor is under the obligation of a covenant entered into by him, or by the assignee whose representative he is, with a former vendor or otherwise for the payment and observance of such rent and covenants, see Dart, 7th ed., 580.

to covenant  
with assignor.

The above covenant is for indemnity only, and does not entitle the vendor to enforce against the purchaser the observance of a negative covenant in the lease, *e.g.*, a covenant to make no alteration of the premises, where the lessor has made no claim in that respect: *Harris v. Boots*, 1904, 2 Ch. 376; 73 L. J. Ch. 708.

Indemnity, the  
sole object of  
the covenant.

In the absence of any express covenant, the original lessee has a legal right to be indemnified by the holder of the lease for the time being against breaches of covenant committed during his tenancy, whether such holder takes by assignment directly from the lessee, or after mesne assignments: *Moule v. Garrett* (1872), L. R. 7 Ex. 101; 41 L. J. Ex. 62; but he has no such right against an under-lessee: *Bonner v. Tottenham, &c. Bldg. Soc.*, 1899, 1 Q. B. 161; 68 L. J. Q. B. 114; and see Dart, 7th ed., 313.

Right of  
original lessee  
to be in-  
demnified.

In a case where A., the original lessee, assigned to B., who assigned to C., who assigned to D., a man of straw, each assignment containing a covenant by the assignee with the assignor to indemnify him against the rent and covenants, B. became bankrupt, and afterwards the lessor sued A. for the rent and recovered it. A. then obtained from B.'s trustee in bankruptcy an assignment of the benefit of C.'s covenant. It was held that, by virtue of that assignment, A. could recover from C. the full amount A. could have got from B., had B. been solvent, and B. could have got from C.: *Re Perkins*, 1898, 2 Ch. 182; 67 L. J. Ch. 454.

When there  
have been  
several mesne  
assignments.

In *Gooch v. Clutterbuck*, 1899, 2 Q. B. 148; 68 L. J. Q. B. 808, a covenant by the purchaser with the vendors, who were executors, to indemnify them against the covenants in the lease, was held to cover the breach of a covenant to repair committed by the vendors, and in respect of which proceedings had been commenced by the lessor before the assignment. The decision was founded on the special circumstances of the case and the language of the covenant, which was not in the usual form. As to the form of covenant, see *Re Poole and Clarke*, 1904, 2 Ch. at p. 177; 73 L. J. Ch. 612.

*Gooch v.*  
*Clutterbuck.*

It is a question of more general interest whether, if a vendor assigns "as beneficial owner," and the lessor afterwards sues and recovers damages from the purchaser in respect of a continuing breach of a covenant to repair, the purchaser has any remedy against the vendor under the covenant implied by virtue of the Conv. Act, 1881, s. 7, sub-s. 1 (B), on the ground that the breach commenced before the assignment. As the purchaser bought the property in its actual condition, and probably paid less for it on that account, he does not appear to have any fair claim against the vendor for indemnity; but the point is not free from doubt.

Extent of  
vendor's  
liability under  
Conv. Act,  
1881, s. 7,  
sub-s. 1 (B).

Where a trustee of leaseholds retires before they are sold it may be desirable that the new trustees should arrange not to sell the lease without

Indemnity to  
trustee of

## No. IX.

ASSIGNMENT of a Portion of LEASEHOLD PREMISES held  
under one LEASE, the RENT being apportioned between the  
VENDOR and PURCHASER (b).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part (*recite lease to Vendor, see Form No. 28, Sect. I., at yearly rent of £12, setting out the parcels as in the Lease*):

Agreement for sale of part of premises, and for apportionment of the rent.

Leaseholds who retires.

Whether counterpart of assignment necessary.

Right of executors to set aside a fund for indemnity in respect of leases formerly held by their testator.

Power of distress as security for observance of mutual covenants void, unless registered.

AND WHEREAS the Vendor has agreed to sell to the Purchaser the hereditaments hereinafter described (being part of the hereditaments comprised in the recited Lease) at the price of £—,

requiring a purchaser to keep them and the estates of former trustees indemnified in regard to future breaches.

The vendor sometimes stipulates that a counterpart of the assignment shall be executed by the purchaser; but this seems unnecessary.

Unless there is privity of estate between executors and a lessor, the Court will not set aside assets to indemnify them against possible liabilities which may arise in respect of leases formerly held by their testator: *Re Nixon*, 1904, 1 Ch. 638; 73 L. J. Ch. 446, see, also *Re King*, 1907, 1 Ch. 72; 76 L. J. Ch. 44.

(b) See Prec. XII., p. 341, *inf.*, for a more usual way of effecting the transaction.

On an assignment of part of the property comprised in a lease, it was formerly usual to make the purchaser and vendor not only covenant with each other for the payment of their respective parts of the rent and for the observance of the covenants in the lease as regards their respective parts of the property, but also to give to each other powers of distress by way of further security. But it is conceived that a power of distress for such a purpose, if contained in an unregistered deed, is now rendered void by the Bills of Sale Acts, 1878 and 1882; see *Pudbrook v. Ashby* (1887), 56 L. J. Q. B. 376; *Re Willis* (1888), 21 Q. B. D. at p. 394; 57 L. J. Q. B. 634; *Sterens v. Marston* (1891), 60 L. J. Q. B. 192. The authority of these cases is not affected by *Re Roundwood Colliery Co.*, 1897, 1 Ch. 373; 66 L. J. Ch. 186. As a mere covenant might, in some cases, be an ineffectual remedy (see *Johanson v. Wild* (1890), 44 Ch. D. 146; 59 L. J. Ch. 322), clauses are added charging the respective portions of the property with the money payable under the covenants. The charge will attach to the premises in the hands of an assign or under-lessee of the person making the charge, provided that he has notice of it. In order to ensure that he has such notice, a memorandum in the form at the end of this precedent should be indorsed on the lease. This deed should be executed in duplicate. The apportionment should be based on the value at the date of severance: *Salts v. Battersby*, 1910, 2 K. B. 155.

and upon the treaty for the said sale it was agreed that the said yearly rent of £12 should be deemed to be (c) apportioned in equal shares between the hereditaments intended to be hereby assigned and the residue of the said leasehold hereditaments, and that the parties hereto should enter into the covenants hereinafter contained :

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser, ALL, &c. (*here set out the particular parcels which are agreed to be sold*) :

Assignment by Vendor of part of premises comprised in Lease to Purchaser for residue of term at apportioned rent.

To HOLD unto the Purchaser for the residue of the said term of — years, subject to the apportioned yearly rent of £6 (being one moiety of the said yearly rent of £12 reserved by the recited Lease), and to the covenants and conditions therein contained, and on the part of the lessee to be observed and performed, so far only as the same relate to the premises hereby assigned.

2. THE Purchaser hereby covenants with the Vendor that the Purchaser or the persons deriving title under him will henceforth pay the apportioned rent of £6, part of the said yearly rent of £12 reserved by the recited Lease, and observe and perform all the covenants and conditions therein contained, and on the part of the lessee to be observed and performed, so far as the same relate to the premises hereby assigned, And also will at all times hereafter save harmless and keep indemnified the Vendor and his estate and effects from and against all proceedings, costs, claims and expenses on account of any omission to pay the said apportioned rent of £6, or any breach of any of the said covenants and conditions, so far as the same relate as aforesaid: AND the Purchaser hereby charges the premises hereby assigned with all money (if any) which shall become payable under his covenant hereinbefore contained (*d*).

Covenant by Purchaser to pay his proportion of rent and to observe covenants.

Charge.

(c) As the lessor is not a party, his rights against any part of the property are not affected. Hence, the better practice is for the vendor either to assign the lease to the largest purchaser upon trust, to grant underleases to the purchasers of other lots or subject to underleases previously granted by the vendor. The simplest plan is for the vendor to grant the underleases, this can be done by trustees: *Re Judd and Poland*, 1906, 1 Ch. 684; 75 L. J. Ch. 403.

(d) This charge does not involve an *ad valorem* stamp on the amount of

Stamp on assignment at

Covenants by Vendor to pay his proportion of rent and observe covenants.

3. THE Vendor hereby covenants with the Purchaser that the Vendor or the persons deriving title under him will henceforth pay the apportioned rent of £6, the residue of the said yearly rent of £12 reserved by the recited Lease, and observe and perform all the covenants and conditions therein contained, and on the part of the lessee to be observed and performed, so far as the same relate to the premises not hereby assigned, And also will at all times hereafter save harmless and keep indemnified the Purchaser and his estate and effects from and against all proceedings, costs, claims and expenses on account of any omission to pay the remaining rent of £6 or any breach of any of the said covenants and conditions so far as the same relate as last aforesaid: AND the Vendor hereby charges such of the premises comprised in the recited Lease as are not hereby assigned with all money (if any) which shall become payable under his covenant hereinbefore contained.

Charge.

Acknowledgment, &c., as to Lease.

4. THE Vendor, who retains the recited Lease, hereby acknowledges the right of the Purchaser to production and delivery of copies thereof, AND hereby undertakes for the safe custody thereof (*c*) (*Add Form No. 11, Sect. III., if required*).

IN WITNESS, &c.

*Memorandum of the above Assignment to be indorsed on the Lease.*

MEMORANDUM that by an Indenture dated, &c., the messuage No. —, &c., part of the premises comprised in the within-written Lease, was assigned unto C. D., of, &c., and the said Indenture contains provisions by way of covenant and charge for apportioning the rent and for securing the payment by each party of his proportion of the said rent and the performance by him of the covenants in the Lease as regards the premises assigned to or retained by him.

apportioned rent.

the rent apportioned: *Swayne v. I. R. Commrs.*, 1899, 1 Q. B. 335; 68 L. J. Q. B. 234; 1900, 1 Q. B. 172; 69 L. J. Q. B. 63.

(*c*) If there are mesne assignments use Form No. 6, Sect. III., *sup.*

## No. X.

ASSIGNMENT to a PURCHASER of the REMAINDER of LEASE-HOLD HEREDITAMENTS held under ONE LEASE, where part has been previously sold to ANOTHER PURCHASER at an apportioned RENT (*f*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part (*Recite Lease to Vendor, Form No. 28, Sect. I., at yearly rent of £12*):

Parties.

AND WHEREAS by an Indenture of Assignment dated the — day of —, and made, &c., a messuage, &c. (*describing parcels as in recited deed*) (being part of the premises comprised in the said Lease), were assigned by the Vendor unto the said C. D. for the residue of the said term of — years, subject to the apportioned yearly rent of £6, part of the said yearly rent of £12 reserved by the recited Lease, and to the covenants and conditions in the recited Lease contained, and on the lessee's part to be observed and performed so far as the same related to the premises thereby assigned: AND the said Indenture contained mutual covenants by the said C. D. and the Vendor for the payment of the apportioned rents of £6 and £6 thenceforth made payable in respect of the hereditaments thereby assigned and the hereditaments retained by the Vendor respectively, and for the observance and performance of the covenants and conditions in the recited Lease contained and on the lessee's part to be observed and performed so far as the same related to the said assigned and retained hereditaments respectively, and for their mutual indemnity in respect of the said apportioned rents, covenants, and conditions: AND the said C. D. and the Vendor charged the said assigned and retained hereditaments respectively with all money (if any) which might from time to time become payable under their respective covenants:

Assignment of part to former Purchaser.

AND WHEREAS the Vendor has agreed to sell the premises hereinafter described (being the residue of the premises comprised in the recited Lease) to the Purchaser, subject as hereinafter mentioned, for the residue of the term granted by the recited Lease at the price of £—:

Agreement for sale of remainder.

---

(*f*) See notes to the last Precedent.

NOW THIS INDENTURE WITNESSETH as follows:—

Assignment  
to Purchaser,

1. IN pursuance of the said Agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser ALL the premises comprised in and demised by the recited Lease other than and except the premises comprised in the recited Assignment,

subject to  
apportioned  
rent, &c.

To HOLD unto the Purchaser for the residue of the term of — years granted by the recited Lease, subject to the yearly rent of £6, part of the said yearly rent of £12 thereby reserved, and to the covenants and conditions therein contained and on the lessee's part to be observed and performed so far as the same relate to the hereditaments hereby assigned, and subject also to and with the benefit of the covenants and charges contained in the recited Assignment.

Covenants by  
Purchaser to  
indemnify  
Vendor.

2. THE Purchaser hereby covenants with the Vendor that the Purchaser or the persons deriving title under him will henceforth during the said term pay the apportioned rent and observe and perform the covenants and conditions contained in the recited Lease which ought to be paid, observed, and performed by him or them in respect of the premises hereby assigned, And also will at all times hereafter save harmless and keep indemnified the Vendor and his estate and effects from and against all proceedings, costs, claims and expenses on account thereof, or on account of the covenants by the Vendor contained in the recited Assignment. (*Add Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

#### No. XI.

ASSIGNMENT *to a PURCHASER of one of several Lots of*  
LEASEHOLD HEREDITAMENTS *held under ONE LEASE,*  
*where the OTHER LOTS are ASSIGNED at the same time to*  
DIFFERENT PURCHASERS *and the RENT is APPORTIONED*  
*as between VENDOR and PURCHASER (g).*

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Counterparts.

(g) The purchases should be completed at the same time by deeds of even date in the same form. A counterpart of each deed should be executed by the respective purchasers and retained by the vendor, who will give to each of the other purchasers a statutory acknowledgment and undertaking for safe custody of the several counterparts, as well as of the lease and other title deeds (if any).

WHEREAS, &c. (*Recite Lease to Vendor at rent of £20. See Form No. 28, Sect. I.*) :

Recital of Lease, and of agreement to sell one Lot to C. D. and remaining Lots to other Purchasers,

AND WHEREAS the Vendor has agreed to sell the hereditaments hereinafter described (being part of the hereditaments comprised in the recited Lease) to the Purchaser at the price of £——, and has also agreed to sell the several hereditaments shortly described in the first column of the first Schedule hereto (being the remainder of the hereditaments comprised in the recited Lease) to the several persons mentioned in the second column of that Schedule :

AND WHEREAS it has been agreed that the said yearly rent of £20 shall be apportioned between the several hereditaments sold as aforesaid, so that the hereditaments intended to be hereby assigned shall be subject to the yearly rent of £4, and that the hereditaments mentioned in the first column of the first Schedule hereto shall be subject to the yearly rents set opposite to the same respectively in the third column of that Schedule :

and for apportionment of rent.

AND WHEREAS the hereditaments mentioned in the first column of the said Schedule have been assigned to the several purchasers thereof respectively by four several Indentures bearing even date with these presents, and each of the said Indentures contains a covenant and charge by the assignee thereunder similar to the covenant and charge by the Purchaser hereinafter contained :

Of assignments to other Purchasers.

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of the said Agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser ALL, &c. (*parcels, expressly describing the property to be assigned*),

Assignment to Purchaser subject to apportioned rent.

To HOLD unto the Purchaser for the residue of the term of—— years granted by the recited Lease, subject to the apportioned yearly rent of £4 (part of the said yearly rent of £20 thereby reserved), and subject also to the covenants and conditions therein contained and on the lessee's part to be observed and performed so far as the same relate to the hereditaments hereby assigned.

2. THE Purchaser hereby covenants with the Vendor, and also as a separate covenant with the several persons mentioned in the second column of the first Schedule hereto and with each of them (*h*), that the Purchaser or the persons deriving title under

Covenants by Purchaser to pay apportioned rent and perform covenants;

(*h*) A person not a party can take the benefit of a covenant: 8 & 9 Vict. c. 106, s. 5; *Dyson v. Forster*, 1909, A. C. 98; 78 L. J. K. B. 246.

him will henceforth during the said term, in respect of the hereditaments hereby assigned, pay the apportioned yearly rent of £4 (part of the said yearly rent of £20 reserved by the recited Lease), and observe and perform all the covenants and conditions therein contained and on the lessee's part to be observed and performed so far as the same relate to the same hereditaments, And will save harmless and keep indemnified the Vendor and the persons mentioned in the second column of the first Schedule hereto and their respective estates and effects from and against all proceedings, costs, claims and expenses on account of any omission to pay the said rent of £4 or any breach of any of the said covenants and conditions, so far as the same relate as aforesaid.

and charge by him of purchased premises with money payable under covenant.

3. THE Purchaser hereby charges the hereditaments hereby assigned with the payment of whatever money shall become payable under his covenant hereinbefore contained.

4. THE Vendor hereby acknowledges the right of the Purchaser to production and delivery of copies of the documents mentioned in the second Schedule hereto, AND hereby undertakes for the safe custody thereof (*Add Form No. 11, Sect. III., if required*).

IN WITNESS, &c.

#### THE FIRST SCHEDULE ABOVE REFERRED TO.

| Short Description of property. | Name of Purchaser. | Apportioned Rent. |
|--------------------------------|--------------------|-------------------|
|                                |                    |                   |

#### THE SECOND SCHEDULE ABOVE REFERRED TO.

Documents retained in the custody of the Vendor.

— 19.—The recited Indenture of Lease of this date.

(*Add Documents subsequent in date to Lease, if any.*)

Even date herewith.—Counterpart Indenture of Assignment of this date made between the Vendor of the one part and E. F. of the other part.

(*Counterparts of the Assignments to the other Purchasers.*)

## No. XII.

ASSIGNMENT to a PURCHASER of one of several Lots of LEASEHOLD HEREDITAMENTS held under ONE LEASE where the OTHER Lots are DEMISED at the same time to DIFFERENT PURCHASERS; VARIATIONS where the UNDERLEASES cannot be granted IMMEDIATELY.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part : Parties.

WHEREAS by an Indenture of Lease dated, &c. (*Form No. 28, Sect. I., down to the end if the Underleases are granted concurrently (i.)*.)

[*If the Underleases are to be granted subsequently, omit the Agreement for sale in Form 28, Sect. I., and substitute the following:—*

AND WHEREAS the Vendor has agreed to sell to the Purchaser the Lot numbered — and described in the first Schedule hereto (being part of the premises comprised in the recited Lease) for the residue of the term thereby granted at the price of £—, and it was part of the said Agreement that the remainder of the premises comprised in the recited Lease should also be assigned to the Purchaser for the residue of the said term, Upon trust to grant Underleases of the other Lots mentioned and described in the first column of the second Schedule hereto to the persons and at the rents respectively mentioned in the second and third columns of that Schedule for the residue of the term granted by the recited Lease (except the last three days thereof), and in accordance with the form of the Underlease contained in the third Schedule hereto.]

Recital of Lease and mesne Assignments (if required), and Agreement for sale.

[Agreement for sale, where the Underleases are to be granted subsequently to the Assignment.]

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £— paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges) the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser ALL the premises comprised in and demised by the recited Lease,

Assignment to Purchaser of the head term.

(i) In this case the Assignment and Underleases will bear even date and be executed concurrently ; hence it will not be necessary to provide that the purchaser shall grant Underleases.

If, as is now more usual, the vendor first grants the Underleases and then assigns the head lease subject, as to the parts affected, to the Underleases, the Assignment will be as in Prec. VIII., p. 331, *sup.* The Underleases will be referred to in the habendum and short particulars of the Underleases will be placed in a Schedule.

Where vendor grants Underleases.

Trust to grant Underleases.

To hold unto the Purchaser for the residue of the term granted by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the recited Lease reserved and contained and henceforth on the part of the lessee to be paid, observed, and performed, As to the premises mentioned in the first Schedule hereto for the Purchaser absolutely And as to the respective hereditaments mentioned in the first column of the second Schedule hereto Upon trust at the request of the Vendor and at the cost of the persons accepting the same to forthwith grant Underleases thereof in accordance in all respects with the form contained in the third Schedule hereto, with such variations only as circumstances may require, to the persons and at the rents respectively mentioned in the second and third columns of the second Schedule hereto for the residue of the term granted by the recited Lease (except the last three days thereof).

Covenant to grant Underleases and to pay rent, &c.

2. THE Purchaser hereby covenants with the Vendor that the Purchaser and the persons deriving title under him will stand possessed of the premises mentioned in the second Schedule hereto, Upon trust to grant the aforesaid Underleases as hereinbefore provided, and will henceforth from time to time duly pay (*continue as in Form No. 5, Sect. III.*).

Documents.

3. *Acknowledgment for production of documents and undertaking for safe custody, Form No. 6, Sect. III., if required (also add Form No. 11, Sect. III., if required).*

Schedules.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

Particulars of Lot No. — assigned to the Purchaser absolutely.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Particulars of Lots assigned to the Purchaser upon trust to grant Underleases.

| No. of Lot and Description. | Intended Lessee. | Yearly Rent. |
|-----------------------------|------------------|--------------|
|                             |                  |              |

THE THIRD SCHEDULE ABOVE REFERRED TO.

The Form of Underlease above referred to.

(As to this form see the next Precedent.)

## No. XIII.

UNDERLEASE *by the PURCHASER of ONE of SEVERAL LOTS held under ONE LEASE, where ALL the LOTS have been ASSIGNED to him UPON TRUST to grant UNDERLEASES of PARTICULAR LOTS.*

THIS INDENTURE, made, &c., BETWEEN A. B. (*assignee of the* Parties, *head term in all the Lots*), of, &c. (hereinafter called the Lessor, which expression shall, where the context so admits, include his executors, administrators and assigns), of the 1st part, C. D., of, &c. (hereinafter called the Vendor), of the 2nd part, and E. F., of, &c. (hereinafter called the Underlessee, which expression shall, where the context so admits, include his executors, administrators and assigns), of the 3rd part:

WHEREAS by an Indenture of Lease dated the — day of —, and made between — of the one part and — of the other part, the hereditaments hereinafter described were (with other hereditaments) demised unto the said — for the term of — years from the — day of — at the yearly rent of £— and subject to the Lessee's covenants and the conditions by and in the said Lease reserved and contained: Recital of Lease.

AND WHEREAS, after divers mesne assignments and acts in the law, ultimately under an Indenture dated the — day of —, and made between — of the one part and the Vendor of the other part, the premises became vested in the Vendor for the residue of the term granted by the recited Lease: Recital of mesne assignments.

AND WHEREAS upon a sale in Lots of the hereditaments comprised in the recited Lease the Vendor agreed to sell to the Underlessee the hereditaments hereinafter described at the price of £— and it was part of the said agreement that the Vendor should assign to the Lessor the whole of the premises comprised in the recited Lease for the residue of the term thereby granted, Upon trust as to part thereof (including the hereditaments hereinafter described) to grant Underleases to certain Purchasers (including the Underlessee) of particular Lots: Agreement for sale.

AND WHEREAS by an Indenture of Assignment (*k*) dated the — day of —, and made between the Vendor of the one part Recital of Assignment on trust to grant Underleases

---

(*k*) See last Precedent.

and the Lessor of the other part, the premises comprised in the recited Lease became and are now vested in the Lessor for the residue of the said term, and as regards the hereditaments herein-after described Upon trust at the request of the Vendor to demise the same to the Underlessee at the rent and subject to the covenants and conditions hereinafter reserved and contained:

NOW THIS INDENTURE WITNESSETH as follows:—

Demise.

1. IN pursuance of the said agreement and in consideration of the sum of £—— on or before (l) the execution of these presents paid by the Underlessee to the Vendor (the receipt of which sum the Vendor hereby acknowledges) the Lessor (m), at the request of the Vendor, hereby demises unto the Underlessee ALL THAT, &c. (*see Forms in Sect. II., sup.*).

X  
Rent

To HOLD unto the Underlessee for the residue of the term granted by the recited Lease (except the last three days thereof), Yielding and paying during the said term the yearly rent of £—— by four equal quarterly payments on the usual quarter days in every year, the first payment to be made on the —— day of ——.

Covenants, &c.

2. THE Underlessee, for himself and his assigns, hereby covenants with the Lessor in manner following, that is to say:—

(i.) That, &c. (*insert covenants and conditions, see Precedents of Leases in Vol. II.; the covenants should correspond with those in the head Lease*).

*The Underlessee will be entitled to a covenant by the Lessor in the following terms (n):—*

Covenant by  
Lessor to pay  
rent, &c.,  
under the  
head Lease.

3. THE Lessor hereby covenants with the Underlessee that the Lessor or the persons deriving title under him will, with respect to the hereditaments comprised in the recited Lease and not hereby demised, henceforth from time to time duly pay all rent becoming due under the recited Lease and observe and perform all the

Covenants  
for title on a  
“demise at  
a rent.”

(l) There will probably be a deposit in this case.

(m) This being a “demise at a rent,” covenants for title cannot be implied under Conv. Act, 1881, s. 7 (1), (5). The underlessee will have the benefit of the vendor's covenants in the assignment: *ib.* s. 7 (6). The lessor will give the usual qualified covenant for quiet enjoyment.

Usual cove-  
nant by under-  
lessor where  
title shown.

(n) See *Brown v. Paull* (1856), 2 Jur. N. S. 317; Dart, 7th ed., 192. It is sometimes provided by conditions of sale that this covenant by the lessor shall be restricted to the property ultimately retained by him.

covenants and conditions therein contained and henceforth on his part to be observed and performed.

4. (*Add covenant for quiet enjoyment by Lessor, see Vol. II.*)

5. (*Add proviso for re-entry and other provisions as required.*)

IN WITNESS, &c.

#### No. XIV.

#### CONVEYANCE of a LEASEHOLD ESTATE for LIVES (o).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

WHEREAS by an Indenture of Lease dated the — day of —, and made between G. H. of the one part, and the Vendor of the other part, ALL, &c. (*set out parcels as described in the Lease*), were granted by the said G. H. unto the Vendor for the lives of — and — (both of whom are still living), and the life of the survivor of them, at the yearly rent of £5, and subject to the covenants and conditions contained in the recited Lease, and on the part of the lessee to be observed and performed :

AND WHEREAS the Vendor has agreed to sell his interest under the said Lease in the said hereditaments to the Purchaser at the price of £— :

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the

(o) An estate *pur autre vie* may be limited by the original grant, or by any subsequent assurance thereof, either to the grantee and his heirs, in which case on his death intestate the heir will take as special occupant (subject, however, to the provisions of Part I. of the L. T. Act, 1897), and the property will be chargeable as assets by descent, as in the case of freehold land in fee simple; or to the grantee, his executors and administrators, in which case the executor or administrator will take by special occupancy, or to the grantee without any words of limitation, in which case it goes to the executor or administrator by virtue of the Wills Act, 1837, s. 6, and an estate *pur autre vie* coming to an executor or administrator by reason of a special occupancy, or otherwise, is made assets in his hands, to be applied in the same manner as the personal estate of the testator or intestate. If an estate *pur autre vie*, either by the original grant or by any subsequent assurance thereof, is limited to the grantee, his heirs, executors and administrators, the heir will take as special occupant: *Atkinson v. Baker* (1791), 4 T. R. 229. See generally Theobald, 7th ed.,

Purchaser ALL the hereditaments and premises comprised in and granted by the recited Lease,

To HOLD unto and to the use of the Purchaser for the lives of the said — and —, and the life of the survivor of them, subject to the rent, covenants, and conditions reserved by and contained in the recited Lease, and on the part of the lessee to be paid, observed, and performed.

2. (*Covenant by Purchaser to indemnify Vendor against rent and covenants in lease, Form No. 5, Sect. III., sup. Add Form No. 11 if required.*)

IN WITNESS, &c.

#### No. XV.

#### ASSIGNMENT of LEASEHOLDS for the residue of a TERM DETERMINABLE on LIVES, and of the benefit of a COVENANT for PERPETUAL RENEWAL (p).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Recital of Lease to Vendor for a term determinable on lives,

WHEREAS by an Indenture of Lease dated, &c., and made between X. Y. of the one part, and the Vendor of the other part, ALL THAT, &c. (*parcels*), were demised by the said X. Y. unto the Vendor for the term of 99 years, from the — day of —, if F., G., and H., or any of them, should so long live, at the yearly rent of £—, and subject to the covenants and conditions therein contained and on the lessee's part to be observed and performed : AND the said Lease contained a covenant by the said X. Y. with the Vendor that in case on the death of such one of them the said F., G., and H., as should first die, the Vendor, or the persons deriving title under him, should within six calendar months from the dropping of such life give to the said

with covenant for perpetual renewal.

Covenants for perpetual renewal.

(p) A covenant in a lease for lives for perpetual renewal does not infringe the rule against perpetuities : *Hare v. Buryes* (1857), 4 K. & J. 45 ; 27 L. J. Ch. 86 ; but, where practicable, the transaction would be better carried out by a demise for a very long term or by a conveyance of the land in fee in consideration of a perpetual rent-charge. A tenant for life can give effect to a covenant for renewal : S. L. Act, 1882, s. 12 (ii.) ; S. L. Act, 1884, s. 4 ; and may, when so authorised, graat land for building purposes in consideration of a rent-charge : S. L. Act, 1890, s. 9.

X. Y., his heirs or assigns, or leave at his or their usual or last-known place of abode, a notice in writing, requesting a new lease of the premises for 99 years, if such two of them the said F., G., and H., as should be then living, and one other person to be nominated for that purpose by the person or persons giving or leaving such notice, or any of them, should so long live, and should within the said period pay the sum of £—— to the said X. Y., his heirs or assigns, by way of fine, for the renewal of such Lease, then and in such case the said X. Y., his heirs or assigns, would within such period as aforesaid, at the request and cost of the Vendor, or the persons deriving title under him, grant to him or them, on the surrender of the said Lease, a new Lease of the premises for a term of 99 years determinable on the lives aforesaid according to such notice, upon the same terms and subject to the same covenants and provisions as were contained in the said Lease, including the covenant for renewal :

AND WHEREAS the Vendor has agreed to sell all his estate and interest under the recited Lease in the said hereditaments (including the benefit of the said covenant for perpetual renewal) to the Purchaser at the price of £—— :

Agreement  
for sale.

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser ALL the messuages and premises comprised in and demised by the recited Lease : TOGETHER with the benefit of the aforesaid covenant for the perpetual renewal of the said Lease :

Assignment of  
leasehold  
premises and  
benefit of  
covenant for  
renewal.

To HOLD unto the Purchaser for the residue of the said term of 99 years, determinable as aforesaid, and for all other the estate and interest therein of the Vendor, subject to the said yearly rent of £——, and the covenants and conditions in the recited Lease contained, and on the lessee's part to be observed and performed.

2. (*Covenant by the Purchaser to indemnify the Vendor against rent and covenants in Lease, Form No. 5, Sect. III., sup. Add Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

## No. XVI.

CONVEYANCE *of* FREEHOLDS, COVENANT *to* SURRENDER  
COPYHOLDS, *and* ASSIGNMENT *of* LEASEHOLDS.

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Seisin of freeholds and title to copyholds. WHEREAS the Vendor is now seised (*q*) in fee simple in possession free from incumbrances of the hereditaments first hereinafter described, and is also seised of the hereditaments secondly hereinafter described, for an estate of inheritance in possession free from incumbrances according to the custom of the Manor of —, in the County of — :

Recital of lease. AND WHEREAS by an Indenture of Lease dated the — day of — (*Form No. 28, Sect. I., including mesne assignments if required, but omitting Agreement for sale*) :

Agreement for sale. AND WHEREAS the Vendor has agreed to sell the said freehold copyhold and leasehold hereditaments to the Purchaser free from incumbrances at the price of £—, which sum, for the purposes of stamp duty, shall be deemed to be apportioned (*r*) as to the sum of £— in respect of the said freehold and leasehold hereditaments and as to the remaining sum of £— in respect of the said copyhold hereditaments :

NOW THIS INDENTURE WITNESSETH as follows:—

Conveyance of freeholds. 1. In pursuance of the said agreement and in consideration of the sum of £— (*s*) (*continue as in Precedent I., p. 323, sup.*).

Covenant to surrender copyholds. 2. In further pursuance of the said agreement and for the consideration aforesaid the Vendor (*continue as in Precedent V., p. 328, sup.*).

Assignment of leaseholds. 3. In further pursuance of the said agreement and for the consideration aforesaid the Vendor (*continue as in Precedent VIII., p. 331, sup.*).

(*q*) *cf.* Form No. 1, Sect. I.

Copyholds stamp. (*r*) This deed will carry an *ad valorem* stamp on the sum which is declared to be the price of the freeholds and leaseholds, and the surrender of the copyholds will carry an *ad valorem* stamp on the sum which is declared to be the price of the copyhold portion : Stamp Act, 1891, ss. 61 (1) (b), 65 (2).

When the property to be sold is freehold and an equitable estate in copyhold, both properties will pass by the deed, so that the deed will be stamped with an *ad valorem* duty on the entire purchase-money : *ib.*, s. 61 (1) (a).

(*s*) This will be the whole purchase-money.

4. THE Purchaser hereby covenants with the Vendor (*continue as in Form No. 5, Sect. III., sup.*). Covenant to pay rent, &c., and indemnity.

5. THE Vendor hereby acknowledges (*continue as in Form No. 6, Sect. III., sup.*). Acknowledgment, &c., as to documents.

IN WITNESS, &c. (*add schedules if required*).

## No. XVII.

### SURRENDER *of* a LEASE (t).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Lessee), of the one part, and C. D., of, &c. (hereinafter called the Freeholder), of the other part : Parties.

WHEREAS these presents are supplemental (u) to an Indenture of Lease (hereinafter called the Principal Indenture) dated the — day of —, and made between — of the one part, and — of the other part, whereby ALL THOSE, &c. (*describe parcels as in the Lease*), were demised unto the said — for the term of twenty-one years from the — day of — at the rent and subject to the covenants by the Lessee and the conditions by and in the Principal Indenture reserved and contained : Recital of Lease to which the surrender is supplemental.

AND WHEREAS, after divers mesne assignments and acts in the law (x), ultimately under an Indenture of Assignment dated, &c., and made, &c., the premises demised by the Principal Indenture became and are now vested in the Lessee for the residue of the term granted by the Principal Indenture : Mesne assignments and assignment to Lessee.

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(t) By the R. P. Act, 1845, s. 3, it is provided that an assignment of a chattel interest, not being copyhold, in any tenements or hereditaments, and a surrender in writing of an interest in any tenements or hereditaments not being a copyhold interest, and not being an interest which might by law have been created without writing, shall be void *at law* unless made by deed. The section refers only to surrenders required to be in writing. Hence, surrenders which take effect by operation of law are not within the Act. The Act protects underlessees, see *Smith v. G. W. Ry. Co.* (1877), 3 A. C. 165; 47 L. J. Ch. 97; and see *Parker v. Jones*, 1910, 2 K. B. 32; 79 L. J. K. B. 921. Assignments of chattel interests in land, and surrenders required to be in writing, must be by deed to pass an interest at law.

(u) See Conv. Act, 1881, s. 53.

(x) See that these words are consistent with the actual circumstances.

That freehold reversion is vested in freeholder free from incumbrances.

AND WHEREAS the freehold reversion immediately expectant upon the term granted by the Principal Indenture is now vested in the Freeholder in fee simple in possession free from incumbrances (y) :

Agreement to surrender.

AND WHEREAS the Lessee has agreed to surrender the said term to the Freeholder in consideration of the sum of £—— :

NOW THIS INDENTURE WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Lessee to the Freeholder (the receipt, &c.), [*or* and in consideration of the premises] the Lessee, As Beneficial Owner, hereby surrenders and assigns unto the Freeholder ALL the premises comprised in and demised by the Principal Indenture, To THE INTENT that the term granted by the Principal Indenture shall forthwith merge and be extinguished in the fee simple and inheritance of the said hereditaments (z).

Proviso cutting down the implied statutory covenants for title.

2. PROVIDED ALWAYS that the statutory covenant implied in these presents by reason of the Lessee being expressed to convey or surrender As Beneficial Owner shall have effect as if clause (B) had been omitted from section seven (1) of the Conveyancing and Law of Property Act, 1881.

Covenant to pay reversion duty.

3. AND the Lessee hereby covenants with the Freeholder that the Lessee will on demand repay to the Freeholder any money which may be expended by him in discharging any reversion duty which under the Finance (1909-10) Act, 1910 (zz), or otherwise may become payable by reason of the determination of the term created by the Principal Indenture and the costs of paying

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(y) If the property is incumbered the surrender must be made to the legal mortgagee: *Robbins v. Whyte*, 1906, 1 K. B. 125; 75 L. J. K. B. 38.

Fixtures on a surrender.

(z) A surrender with a view to the grant of a new lease *primâ facie* includes fixtures, and the tenant will lose his right to remove them unless he expressly stipulates to the contrary: *Leschallus v. Woolf*, 1908, 1 Ch. 641; 77 L. J. Ch. 345. Hence, where the right of removal is to be kept on foot the following clause may be added :—

PROVIDED ALWAYS, that these presents shall not prejudice or affect any rights to which the Lessee was entitled immediately before the execution of these presents in respect to the removal of fixtures.

(zz) See Fin. (1909-10) Act, 1910, ss. 13-15. It seems that the increment value duty, if any, ought to be paid by the reversioner.

the same, and will at all times hereafter save harmless and keep indemnified the Freeholder and his estate and effects from all proceedings, claims, and demands in respect of such duty and costs.

IN WITNESS, &c.

GROUP B.—CONVEYANCES ON SALES BY ABSOLUTE OWNERS WITH  
THE CONCURRENCE OF INCUMBRANCERS.

No. I.

CONVEYANCE of FREEHOLDS by a MORTGAGOR (*the MORTGAGEES CONCURRING*), where PART of the PURCHASE-MONEY is paid to the MORTGAGEES in satisfaction of their debt. VARIATIONS where the MORTGAGEES release PART of their SECURITY without being Paid off.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Mortgagees), of the 1st part, E. F., of, &c. (hereinafter called the Vendor), of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part :

WHEREAS by an Indenture of Mortgage dated the — day of —, and made between the Vendor of the one part, and the Mortgagees of the other part (*Form No. 2, Sect. I., sup., down to the end. The necessary variations appear in the Form*) :

NOW THIS INDENTURE WITNESSETH that in pursuance of the said Agreement and in consideration of the sum [of £— paid by the Purchaser to the Mortgagees (*a*) by the direction of the Vendor (the receipt of which sum the Mortgagees hereby acknowledge), and of the further sum] of £— paid by the Purchaser to the Vendor [with the consent of the Mortgagees (*b*)] (the receipt of which sum of £— (*c*) [and the payment of the aforesaid sum of £— (*d*), making together the said purchase-money of £—], the Vendor hereby [respectively]

Parties.

Recitals of the mortgage, Agreement for sale and for the Mortgagees to concur, and state of mortgage debt.

Payment of part of the purchase-money to the Mortgagees.

Payment of the remainder of the purchase-money to the Vendor.

(*a*) Where the mortgagees are merely releasing without receiving anything and there is a recital “that they are satisfied with the security which will remain,” the words referring to payment to them will be omitted.

(*b*) These words will be required where the mortgagees are releasing part of their security.

(*c*) The amount paid to the vendor.

(*d*) The amount if any, paid to the mortgagees.

Conveyance by Mortgagees and Vendor. acknowledges) the Mortgagees, As Mortgagees, and according to their estate (e) and by the direction of the Vendor, hereby convey and release and the Vendor, As Beneficial Owner, hereby conveys and confirms unto the Purchaser, ALL THAT &c. (*see Forms in Sect. II., sup.*),

Habendum. To HOLD unto and to the use of the Purchaser in fee simple discharged from all principal money and interest secured by and all claims under the recited mortgage.

Documents. (*Add acknowledgment for production of documents by mortgagees, Form No. 6, Sect. III., if required (f); also, if part of the debt is to remain, covenant by Vendor, Form No. 7, Sect. III., sup. Add Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

## NO. II.

CONVEYANCE of FREEHOLDS by a MORTGAGOR (the MORTGAGEES CONCURRING), where the MORTGAGE DEBT is kept on foot as a protection against MESNE INCUMBRANCES (g).

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and

Implied covenants for title. (e) This Precedent implies a several covenant by the mortgagees that they have not incumbered or done any act to prevent them from conveying, &c.: Conv. Act, 1881, s. 7 (1) (F). This being a covenant by "every person," the word "person" does not admit of being read in the plural, and the covenant is, moreover, expressly confined to the person's own acts. So that making two persons jointly convey "as mortgagees" or "as trustees" has not, as in other cases, the effect of a joint covenant.

The Precedent also implies a covenant for title by the vendor that, notwithstanding anything by him or the mortgagees or any one through whom he derives title otherwise than by purchase for value, &c., he and the mortgagees can convey, &c.: s. 7 (1) (A).

Mortgagee or trustee conveys only according to his estate except on selling. A mortgagee or trustee, except where he is selling, conveys by reference to his mortgage or trust deed. If he conveys by substantive description it is usual to add the words "according to his estate."

"Convey" is used in this and other Precedents, but it is not a necessary word.

(f) If the mortgagees are releasing part of their security they will retain the documents of title and give the acknowledgment. A mortgagee or trustee should not give an undertaking for safe custody, see Dart, 7th ed., 578. As to the rights of a purchaser in respect of documents retained by a mortgagee, see note to Form No. 7, Sect. III., *sup.*

When title should be (g) It is not usual or desirable to keep the mortgage debt on foot unless

C. D., of, &c. (hereinafter called the Mortgagees), of the 1st part,  
E. F., of, &c. (hereinafter called the Vendor), of the 2nd part, and  
G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part :

WHEREAS by an Indenture of Mortgage dated the — day of —, and made between the Vendor of the one part and the Mortgagee of the other part (*Form No. 2, Sect. I., sup., down to the end (h) :*

Recital of the mortgage, Agreement for sale and for the Mortgagees to concur.

AND WHEREAS upon the treaty for the said purchase it was agreed that the said mortgage debt should be kept on foot as a protection to the Purchaser against subsequent incumbrances (if any) in manner hereinafter appearing (*i*) :

Agreement to keep mortgage debt on foot.

NOW THIS INDENTURE WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £—— paid (*continue as in the last Precedent down to respectively acknowledges*), the Mortgagees, As Mortgagees and by the direction of the Vendor, hereby assign unto the Purchaser

Assignment of mortgage debt.

ALL THAT the principal sum of £—— secured by the recited mortgage and the interest to become due thereon,

TO HAVE AND RECEIVE the same unto the Purchaser absolutely, TO THE INTENT that the said principal sum and interest shall be deemed to be a subsisting charge on the hereditaments herein-after described as a protection to the Purchaser, his heirs and

Mortgage debt to remain on foot.

the purchaser has reason to suspect the existence of a subsequent incumbrance, for this procedure complicates the title. If the purchaser has notice of a subsequent incumbrance it is desirable that the first mortgagees should make title under their power of sale.

made by first mortgagees.

(*h*) The mortgagee will, of course, receive the whole of his mortgage debt.

(*i*) In *Toulmin v. Steere* (1817), 3 Mer. 210; land subject to two incumbrances was sold by the owner and conveyed by him to the purchaser with the concurrence of the first mortgagee, and the first mortgage was paid off out of the purchase-money. The purchaser had through his agent constructive notice of the second incumbrance. It was held that the purchaser could not set up the first mortgage, which he had paid off, against the second incumbrance. It has been decided that the doctrine laid down in *Toulmin v. Steere* applies only where there is no contemporaneous expression of intention to the contrary, and that a simple statement in the conveyance of such an intention is sufficient to keep alive the prior mortgage as against a subsequent incumbrance, if any such there be. And even where there is no expressed intention to keep the charge alive, such an intention will be presumed, where it is for the evident benefit of the owner of the estate. As to what will create a sufficient presumption of intention, see Dart, 7th ed., 952; *Re Gibbon*, 1909, 1 Ch. 367; 78 L. J. Ch. 264; *Butler v. Rice*, 1910, 2 Ch. 277.

Mortgage debt may be kept on foot as protection by simple declaration.

assigns, against subsequent incumbrances (if any), but for no other purpose.

Conveyance of  
the land.

2. IN further pursuance of the said agreement and for the considerations aforesaid, the Mortgagees, As Mortgagees and according to their estate and by the direction of the Vendor, hereby convey and release, and the Vendor, As Beneficial Owner, hereby conveys and confirms unto the Purchaser,

ALL THAT, &c. (*see Forms in Sect. II., sup.*).

To HOLD unto and To THE USE of the Purchaser in fee simple.

[3. *Add acknowledgment and undertaking as regards any documents retained by the Vendor, Form No. 6, Sect. III., sup.; also Form No. 11 if required.*]

IN WITNESS, &c.

### No. III.

CONVEYANCE of TWO FREEHOLD ESTATES by a MORTGAGOR  
*where the MORTGAGEES of each ESTATE CONCUR and are  
paid off.*

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Mortgagees (*k*) of the X. estate), of the 1st part, E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees, of the Y. estate), of the 2nd part, K. L., of, &c. (hereinafter called the Vendor), of the 3rd part, and M. N., of, &c. (hereinafter called the Purchaser), of the 4th part :

Recital of  
mortgage of  
X. Estate.

WHEREAS by an Indenture of Mortgage (hereinafter called the X. Mortgage) dated the --- day of ---, and made between the Vender of the one part, and the Mortgagees of the X. Estate of the other part, the Vendor, being then seised in fee simple in possession free from incumbrances, conveyed the hereditaments first hereinafter described to the Mortgagees of the X. Estate in fee simple by way of mortgage for securing

Where there  
are a large  
number of  
mortgagees of  
different parts  
of the property.

(*k*) Where there are a large number of mortgagees of different parts of the property the conveyance can be shortened by means of a schedule containing in separate columns the names of the mortgagees, the property affected, the dates of the mortgages, and the debts secured. It will then be sufficient in the body of the deed to recite that the legal estates in the respective hereditaments described in the second column of the schedule are vested in the persons whose names appear in the first column of the schedule, and that the respective equities of redemption are vested in the vendor.

payment to them of the principal sum of £—, with interest thereon as therein mentioned :

AND WHEREAS by an Indenture of Mortgage (hereinafter called the Y. Mortgage), dated the — day of —, and made between the Vendor of the one part, and the Mortgagees of the Y. Estate of the other part, the Vendor, being then seised in fee simple in possession free from incumbrances, conveyed the hereditaments secondly hereinafter described to the Mortgagees of the Y. Estate in fee simple by way of mortgage for securing the payment to them of the principal sum of £—, with interest thereon as therein mentioned :

Recital of mortgage of Y. estate.

AND WHEREAS the Vendor has agreed to sell to the Purchaser the hereditaments first and secondly hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £—.

Agreement for sale.

AND WHEREAS the said principal sums of £— and £— are still owing to the Mortgagees of the X. and Y. Estates respectively upon the security of the X. and Y. mortgages, all interest thereon having been paid, as they hereby respectively acknowledge, and they have agreed upon receiving the sums so due to them to join in these presents in manner hereinafter appearing.

Agreement by Mortgagees to concur and state of mortgage debts.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said Agreement and in consideration of the sum of £— paid to the Mortgagees of the X. Estate, and of the sum of £— paid to the Mortgagees of the Y. Estate by the Purchaser by the direction of the Vendor (the receipt of which sums the Mortgagees of the X. and Y. Estates hereby respectively acknowledge) and of the sum of £— paid to the Vendor by the Purchaser (the receipt of which sum of £— (*l*) and the payment of which sums of £— (*m*) and £— (*m*), making together the said purchase-money of £—, the Vendor hereby acknowledges), the Mortgagees of the X. Estate, for the purpose of releasing the hereditaments first hereinafter described from their said mortgage debt of £— by the direction of the Vendor and according to their estate, As Mortgagees, hereby convey and release, and the Mortgagees of the Y. Estate, for the purpose of

Witnessing part.

Payment of purchase-money.

(*l*) The amount paid to the vendor.

(*m*) The amounts paid to the mortgagees.

releasing the hereditaments secondly hereinafter described from their said mortgage debt of £—— by the direction of the Vendor and according to their estate, As Mortgagees, hereby convey and release, and the Vendor as to all the hereditaments hereinafter described, As Beneficial Owner, hereby conveys and confirms unto the Purchaser,

Conveyance of  
X. and Y.  
estates.

Discharged  
from the mort-  
gage debts.

FIRST, ALL THOSE (*description of X. Estate*),

AND, SECONDLY, ALL THOSE (*description of Y. Estate*),

To HOLD unto and To THE USE of the Purchaser in fee simple discharged from all principal money and interest secured by and all claims under the X. and Y. Mortgages, or either of them. (*Add, if required, acknowledgment and undertaking by Vendor as to documents retained by him, Form No. 6, Sect. III., sup.; also, if required, Form No. 11, Sect. III.*)

IN WITNESS, &c.

#### No. IV.

CONVEYANCE of FREEHOLDS by a MORTGAGOR where FIRST and SECOND MORTGAGEES CONCUR and are paid off.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the First Mortgagees), of the 1st part, E. F., of, &c., and G. H., of, &c. (hereinafter called the Second Mortgagees), of the 2nd part, K. L., of, &c. (hereinafter called the Vendor), of the 3rd part, and M. N., of, &c. (hereinafter called the Purchaser), of the 4th part:

Recital of the  
First Mortgage.

WHEREAS by an Indenture of Mortgage (hereinafter called the First Mortgage) dated (*continue as in Form No. 2, Sect. I., sup.*):

Recital of  
the Second  
Mortgage.

AND WHEREAS by an Indenture of Mortgage (hereinafter called the Second Mortgage) dated the —— day of ——, and made between the Vendor of the one part and the Second Mortgagees of the other part, the Vendor conveyed the hereditaments hereinafter described (subject to the First Mortgage and to the principal money and interest thereby secured) to the Second Mortgagees in fee simple by way of mortgage for securing the payment to them of the principal sum of £—— and interest thereon:

Agreement  
for sale.

AND WHEREAS the Vendor has agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——:

AND WHEREAS the said principal sums of £—— and £—— are still owing to the First and Second Mortgagees respectively upon the security of the First and Second Mortgages, all interest thereon having been paid as they hereby acknowledge, and they have agreed, upon receiving the sums so due to them, to join in these presents in manner hereinafter appearing :

Agreement  
by Mortgagee  
to concur.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid to the First Mortgagees and of the sum of £—— now paid to the Second Mortgagees by the Purchasers by the direction of the Vendor (the receipt of which sums the First and Second Mortgagees hereby respectively acknowledge) and of the sum of £—— now paid to the Vendor by the Purchaser (the receipt of which sum of £—— (n) and the payment of which sums of £—— (o) and £—— (o), the Vendor hereby acknowledges), the First Mortgagees, according to their estate and by the direction of the Vendor, As Mortgagees, hereby convey and release, and the Second Mortgagees, according to their estate and by the direction of the Vendor, As Mortgagees, hereby convey and release, and the Vendor, As Beneficial Owner, hereby conveys and confirms unto the Purchaser

Witnessing  
part.

ALL THAT, &c. (*see Forms in Sect. II., sup.*).

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple, discharged from all principal money and interest secured by and all claims under the First and Second Mortgages, or either of them. (*Add, if required, acknowledgment and undertaking by the Vendor, Form No. 6, Sect. III., and Form No. 11, Sect. III.*)

IN WITNESS, &c.

#### No. V.

CONVEYANCE *by a MORTGAGOR with the CONCURRENCE of a MORTGAGEE for a TERM of YEARS (p).*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c., and

Parties.

(n) The amount paid to the vendor.

(o) The amounts paid to the mortgagees.

(p) A term is now rarely created for mortgage purposes except in the case of family charges as in the text. Where the charge consists of a rent-charge

E, F., of, &c. (hereinafter called the Mortgagees), of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part:

Recital of  
Settlement  
creating term  
for securing  
portions.

WHEREAS by an Indenture of Settlement dated the — day of —, and made between John B. of the 1st part, Jane R. of the 2nd part, and X. and Y. of the 3rd part (being a settlement made in consideration of the marriage shortly afterwards solemnised between the said John B. and Jane R.), the hereditaments hereinafter described were (with other hereditaments) limited after the death of the said John B,

To THE USE of the parties thereto of the 3rd part for a term of 500 years, without impeachment of waste, upon trusts for raising by mortgage or otherwise, as the portion or portions of any child or children of the then intended marriage, who should attain the age of twenty-one years, or in the case of daughters marry (other than a first or only son as therein mentioned), if (as happened) there should be three or more such children, the sum of £20,000 with interest thereon as therein mentioned, AND subject to the said term and the trusts thereof, To THE USE of the first and other sons of the said marriage successively according to seniority in tail male, with divers remainders over :

Deaths of  
husband and  
wife and issue  
of the  
marriage.

AND WHEREAS the said Jane R., then Jane B., died on the — day of —, and the said John B. died on the — day of —, having had issue by his said wife five children and no more, namely, an eldest son, the Vendor, who was born on the — day of —, and four other children all of whom attained the age of twenty-one years :

Disentail by  
Vendor.

AND WHEREAS by an Indenture dated the — day of —, and made between the Vendor of the one part, and X. Y. of the other part (duly enrolled as a disentailing assurance), the hereditaments hereinafter described (with the other hereditaments) were conveyed by the Vendor unto the said X. Y. in fee simple discharged from all estates in tail male of the Vendor and from all limitations to take effect after the determination, or in defeasance of such estates, and so discharged, To THE USE of the Vendor in fee simple (q) :

---

the donee has power to limit a term himself, see Conv. Act, 1881, s. 44. Hence it is now unnecessary to limit a term by the settlement for the purpose of securing it.

Powers of  
tenant in tail

(q) Title can be made under the S. L. Acts by a tenant in tail in possession,

AND WHEREAS by an Indenture of Mortgage dated the — day of —, and made between the said X. & Y. of the one part, and the Mortgagees of the other part, the said term of 500 years was assigned by the said X. & Y. unto the Mortgagees, subject to redemption on payment by the person or persons for the time being entitled to the said hereditaments in reversion expectant upon the said term of the sum of £20,085 (being the sum charged in respect of the said portions and the costs of raising the same), with interest thereon as therein mentioned :

Mortgage by Trustees of the portion, term.

AND WHEREAS the Vendor has agreed to sell the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances to the Purchaser at the price of £2,500 :

Agreement for sale.

AND WHEREAS the sum of £15,500, and no more, is now owing on the security of the recited Mortgage with the current half-year's interest thereon, and the Mortgagees have at the request of the Vendor agreed on receiving the sum of £500 in part satisfaction of the said mortgage debt to join in these presents in manner hereinafter appearing :

Amount of mortgage debt and agreement by Mortgagees to concur on part payment.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £500 now paid by the Purchaser by the direction of the Vendor to the Mortgagees (the receipt of which sum the Mortgagees hereby acknowledge), and of the sum of £2,000 now paid by the Purchaser with the consent of the Mortgagees to the Vendor (the payment and receipt of which sums of £500 and £2,000, making together the aggregate purchase-money of £2,500, the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys and the Mortgagees, As Mortgagees, and according to their interest and by the direction of the Vendor, hereby surrender and assign unto the Purchaser

Conveyance by Vendor and surrender by Mortgagees.

ALL, &c. (*parcels, see Forms in Sect. II., sup.*),

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple discharged from all money secured by and from all claims under the recited Mortgage, and To the intent that the term of 500 years created by the recited Settlement may, as regards the hereditaments hereby conveyed, merge and be extinguished in the inheritance thereof.

Habendum discharged from the term and mortgage.

even though he has barred the entail, if the estate fell into possession before the disentailing assurance was executed. But in the case in the text the term cannot be overreached because the term has been conveyed to raise money.

in possession, after barring entail.

Acknowledg-  
ment and  
undertaking  
as to docu-  
ments.

2. THE Vendor hereby acknowledges the right of the Purchaser to production of the recited Settlement and Disentailing Assurance and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

3. THE Mortgagees hereby acknowledge the right of the Purchaser to production of the recited Mortgage and to delivery of copies thereof.

IN WITNESS, &c.

### No. VI.

#### CONVEYANCE *of* FREEHOLDS *with the* CONCURRENCE *of the* OWNER *of a* RENT-CHARGE.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c. (hereinafter called the Mortgagee), of the 2nd part, and E. F., of, &c. (hereinafter called the Purchaser), of the 3rd part :

Recital of con-  
veyance to  
Vendor,  
subject to  
rent-charge.

WHEREAS by an Indenture of Conveyance dated, &c., and made, &c., the hereditaments hereinafter described were conveyed (with other hereditaments), To THE USE that the Mortgagee should thenceforth during his life receive the yearly rent-charge of £15 to be issuing out of the said hereditaments, and subject thereto, To THE USE of the Vendor in fee simple :

Agreement  
for sale.

AND WHEREAS the Vendor has agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £—— :

Amuitant  
agrees to  
release.

AND WHEREAS the Mortgagee, being satisfied that the other hereditaments comprised in the recited conveyance are a sufficient security for the said rent-charge, has agreed to join in these presents in manner hereinafter appearing :

NOW THIS INDENTURE WITNESSETH as follows :—

Conveyance of  
land and  
release of rent-  
charge.

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys, and the Mortgagee, As Mortgagee, and for the purpose only of releasing the hereditaments hereinafter described from his said rent-charge, hereby releases unto the Purchaser,

ALL THOSE, &c. (*parcels, see Forms in Sect. II., sup.*).

To HOLD unto and To THE USE of the Purchaser in fee simple discharged from the said yearly rent-charge of £15 limited by the recited Conveyance and from all powers and remedies for securing the same.

2. THE Vendor hereby acknowledges (*Form No. 6, Sect. III., sup.; also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

## No. VII.

COVENANT to SURRENDER COPYHOLDS *by a MORTGAGOR with the CONCURRENCE of MORTGAGEES, who have NOT been ADMITTED; VARIATIONS where there has been a CONDITIONAL SURRENDER.*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Mortgagees), of the 1st part, E. F., of, &c. (hereinafter called the Vendor), of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part :

WHEREAS by an Indenture of Mortgage dated the — day of —, and made between the Vendor of the one part, and the Mortgagees of the other part, the Vendor covenanted with the Mortgagees that (*If there has been no conditional surrender continue Form No. 21, Sect. I., sup., down to the end*):

[*(Recite mortgage as in Form No. 21, Sect. I., sup.)*]

AND WHEREAS on the — day of — the Vendor out of court surrendered the said hereditaments into the hands of the lord of the said Manor by the hands and acceptance of his steward, according to the custom of the said Manor, To THE USE of the Mortgagees and their heirs at the will of the lord, according to the said custom and by and under the rents, fines, suits and services therefor due and of right accustomed, but subject to a condition for making void such surrender if the Vendor should pay to the Mortgagees the said sum of £—, with interest thereon as therein mentioned (*v*) :

Recital of Mortgage that no surrender has been made. Agreement for sale and for Mortgagees to concur.

[Variations where there has been a conditional surrender.

Recital of conditional surrender.]

(*v*) If the mortgagees have been admitted, their admission must be recited and they will be the persons to surrender; it is not, however, usual for mortgagees to be admitted till they intend to sell under their power of sale.

Admission of mortgagees on conditional surrender.

[Agreement  
for sale, for  
Mortgagees to  
concur, and for  
satisfaction to  
be entered up  
on court rolls.]

[AND WHEREAS (*Recite Agreement for sale and for Mortgagees to concur, as in Form No. 21, Sect. I., sup., and add*) and that immediately after the execution of these presents satisfaction of the said conditional surrender shall be entered up on the rolls of the said Manor (s)]:

Covenant  
to surrender.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said Agreement, and in consideration of the sum of £—, now paid to the Mortgagees by the Purchaser by the direction of the Vendor (the receipt of which sum the Mortgagees hereby acknowledge), and of the sum of £—, now paid to the Vendor by the Purchaser (the receipt of which sum of £— (t) and the payment of which sum of £— (u), making together the aggregate purchase-money of £—, the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, with the concurrence of the Mortgagees (testified by their execution hereof), hereby covenants with the Purchaser that the Vendor will forthwith at the cost of the Purchaser surrender or cause to be surrendered into the hands of the lord [lady] of the said Manor, according to the custom of the said Manor,

ALL, &c. (*see Forms in Sect. II., sup.*) [to which hereditaments the Vendor was admitted tenant at a court of the said manor held on the — day of — (x)],

TO THE USE of the Purchaser and his heirs at the will of the lord according to the custom of the said Manor at and under the rents, fines, suits and services therefor due and of right accustomed, discharged from all principal money and interest secured by and all claims under the recited Mortgage [and the recited conditional surrender].

(*Add, if required, acknowledgment and undertaking, Form No. 6, Sect. III., sup.*)

IN WITNESS, &c.

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(s) Simultaneously with the execution of this deed the mortgagees should sign a warrant to the steward of the manor to enter up satisfaction of the conditional surrender on the rolls of the manor. For a form of such a warrant, see *Precedents of Reconveyances, inf.*

(t) The amount paid to the vendor.

(u) The amount paid to the mortgagees.

(x) If the admittance of the vendor is not previously recited the words in square brackets will be used.

## No. VIII.

ASSIGNMENT of LEASEHOLDS by a MORTGAGOR with the CONCURRENCE of MORTGAGEES, where the MORTGAGE is by way of ASSIGNMENT. VARIATIONS where the MORTGAGE is by way of SUB-DEMISE.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Mortgagees), of the 1st part, E. F., of, &c. (hereinafter called the Vendor), of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part :

Parties

WHEREAS by an Indenture of Lease (*Recite Lease to Vendor or Lease and mesne assignments, as in Form No. 28, Sect. I., sup.*) :

Recital of lease.

AND WHEREAS by an Indenture of Mortgage dated the — day of —, and made between the Vendor of the one part, and the Mortgagees of the other part, the hereditaments comprised in the recited Lease were assigned [demised (*y*)] by the Vendor to the Mortgagees for the residue of the said term [except the last three days thereof (*z*)] by way of Mortgage for securing payment to the Mortgagees of the principal sum of £—, with interest thereon as therein mentioned :

Recital of Mortgage by assignment.

Variations where the Mortgage is by way of sub-demise.

AND WHEREAS the Vendor has agreed to sell to the Purchaser the hereditaments comprised in the recited Lease for the residue of the said term free from incumbrances at the price of £— :

Agreement for sale.

AND WHEREAS the said principal sum of £—, and no more, is still owing to the Mortgagees upon the security of the recited Mortgage, all interest thereon having been paid as they hereby acknowledge, and they have agreed upon receiving the sum so due to them to join in these presents in manner hereinafter appearing :

Agreement by Mortgagees to concur.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £ — paid by the Purchaser to the Mortgagees by the direction of the Vendor (the receipt of which sum the Mortgagees hereby acknowledge) and of the sum of £— paid

Assignment of all the property comprised in the Lease.

(*y*) “Demised” will be substituted for “assigned” where the mortgage is by sub-demise.

(*z*) These words will be added where the mortgage is by sub-demise.

by the Purchaser to the Vendor (the receipt of which sum of £—— (a) and the payment of which sum of £—— (b), making together the aggregate purchase-money of £——, the Vendor hereby acknowledges), the Mortgagees, As Mortgagees, and according to their estate and by the direction of the Vendor, hereby assign [surrender (c)] and release, and the Vendor, As Beneficial Owner, hereby assigns and confirms unto the Purchaser,

ALL and Singular the premises comprised in and demised by the recited lease,

To HOLD unto the Purchaser for the residue of the term granted by the recited Lease and at the rent and subject to the lessee's covenants and the conditions by and in the recited Lease reserved and contained and henceforth on the part of the lessee to be paid, observed, and performed and discharged from all principal money and interest secured by and from all claims under the recited Mortgage,

Merger of  
derivative  
term.

[To THE INTENT that the derivative term created by the recited Mortgage shall forthwith merge and be extinguished in the term granted by the recited lease (d)].

Covenant by  
Purchaser to  
pay rent and  
for indemnity.  
Documents.

2. The Purchaser hereby covenants with the Vendor (*continue as in Form No. 5, Sect. III., sup.*).

3. (*Acknowledgment for production of documents, &c., Form No. 6, Sect. III., if required; also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

#### No. IX.

#### CONVEYANCE of FREEHOLDS, COVENANT to surrender COPYHOLDS and ASSIGNMENT of LEASEHOLDS by a MORTGAGOR with the CONCURRENCE of MORTGAGEES.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Mortgagees), of the 1st part, E. F., of, &c. (hereinafter called the Vendor), of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part:

Recital of  
seisin of Vendor

WHEREAS immediately before the execution of the Indenture of

(a) The amount paid to the vendor.

(b) The amount paid to the mortgagees.

(c) "Surrender" will be added where the mortgage is by sub-demise.

(d) These words will only be used where the mortgage is by sub-demise.

Mortgage hereinafter recited the Vendor was seised in possession free from incumbrances as to the freehold hereditaments first hereinafter described for an estate in fee simple and as to the copyhold hereditaments secondly hereinafter described for a customary estate according to the custom of the Manor of —, and to which copyhold hereditaments the Vendor was admitted out of court on the — day of —:

AND WHEREAS by an Indenture of Lease (*Recite Lease to Vendor or Lease and mesne assignments, as in Form No. 28 Sect. I., sup.*):

of freeholds and copyholds and admittance to copyholds.

Recital of lease.

AND WHEREAS by an Indenture of Mortgage dated the — day of —, and made between the Vendor of the one part and the Mortgagees of the other part, the Vendor conveyed the said freehold hereditaments to the Mortgagees in fee simple and covenanted to surrender the said copyhold hereditaments to the use of the Mortgagees and their heirs according to the custom of the said Manor, and also assigned [*demised (e)*] the said leasehold hereditaments to the Mortgagees for the residue of the term granted by the recited Lease [(except the last three days thereof) (*f*)] by way of mortgage for securing payment to the Mortgagees of the principal sum of £—, with interest thereon as therein mentioned:

Recital of Mortgage of freeholds, copyholds and leaseholds.

AND WHEREAS the Vendor has agreed to sell to the Purchaser the said freehold, copyhold and leasehold hereditaments free from incumbrances at the price of £—:

Agreement for sale.

AND WHEREAS the said principal sum of £—, and no more, is still owing to the Mortgagees upon the security of the recited Mortgage, all interest thereon having been paid as they hereby acknowledge, and they have agreed upon receiving the sum so due to them to join in these presents in manner hereinafter appearing:

Agreement for Mortgagees to concur.

AND WHEREAS no surrender pursuant to the covenant contained in the recited Mortgage has ever been made to the Mortgagees of the said copyhold hereditaments (*g*):

Recital that no surrender of copyholds made to the Mortgagees.

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN pursuance of the said Agreement and in consideration of

Conveyance of Freeholds.

(*e*) “Demised” will be substituted for “assigned” if the mortgage was by sub-demise.

(*f*) These words will only be used if the mortgage was by sub-demise.

(*g*) It is assumed in this Precedent that there has been no conditional surrender. If there has, see variations in Prec. VII. of this group, p. 361, *sup.*

the sum of £—— paid by the Purchaser to the Mortgagees by the direction of the Vendor (the receipt of which sum the Mortgagees hereby acknowledge) and of the sum of £—— paid by the Purchaser to the Vendor (the receipt of which sum of £—— (*h*) and the payment of which sum of £—— (*i*), making together the aggregate sum of £——, the Vendor hereby acknowledges) the Mortgagees, As Mortgagees, and according to their estate and by the direction of the Vendor, hereby convey and release, and the Vendor, As Beneficial Owner, hereby conveys and confirms unto the Purchaser,

ALL THOSE, &c. (*see Forms, Sect. II., sup.*).

To HOLD unto and To THE USE of the Purchaser in fee simple discharged from all principal money and interest secured by and from all claims under the recited Mortgage.

Covenant to  
surrender  
copyholds.

2. For the consideration aforesaid the Vendor, As Beneficial Owner, with the concurrence of the Mortgagees (testified by their execution hereof), hereby covenants with the Purchaser that the Vendor will forthwith at the cost of the Purchaser surrender or cause to be surrendered into the hands of the lord of the said Manor, according to the custom of the said Manor,

ALL, &c. (*see Forms in Sect. II., sup.*).

To THE USE of the Purchaser and his heirs at the will of the lord according to the custom of the said Manor at and under the rents, fines, suits and services therefor due and of right accustomed, discharged from all principal money and interest secured by and all claims under the recited Mortgage.

Assignment of  
Leaseholds.

3. For the consideration aforesaid the Mortgagees, As Mortgagees, and according to their estate and by the direction of the Vendor, hereby assign [surrender (*k*)], and release and the Vendor, As Beneficial Owner, hereby assigns and confirms unto the Purchaser,

ALL the premises comprised in and demised by the recited Lease.

To HOLD unto the Purchaser for the residue of the term granted by the recited Lease and at the rent and subject to the lessee's covenants and the conditions by and in the recited Lease reserved and contained and henceforth on the part of the lessee

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(*h*) The amount paid to the vendor.

(*i*) The amount paid to the mortgagees.

(*k*) "Surrender" will be added where the mortgage is by sub-demise.

to be paid, observed, and performed and discharged from all principal money and interest secured by and from all claims under the recited Mortgage.

[To THE INTENT that the derivative term created by the recited Mortgage shall forthwith merge and be extinguished in the term granted by the recited Lease (l)].

4. The Purchaser hereby covenants with the Vendor (*continue as in Form No. 5, Sect. III., sup.*).

Covenant by Purchaser to pay rent and for indemnity. Documents.

5. (*Acknowledgment for production of documents, &c., Form No. 6, Sect. III., sup., if required.*)

IN WITNESS, &c.

# GROUP C.—CONVEYANCES ON SALES BY INCUMBRANCERS REALIZING THEIR SECURITIES.

## No. I.

CONVEYANCE of FREEHOLDS by MORTGAGEES under the STATUTORY POWER of SALE. VARIATION where the POWER of SALE is expressly conferred by the MORTGAGE.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*the Mortgagees*) (*m*) (hereinafter called the Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part :

Parties.

WHEREAS by an Indenture of Mortgage dated the — day of —, and made between — (*the Mortgagor*) of the one part and the Vendors of the other part (*n*) (*continue Form No. 3, Sect. I., sup., and, if the Mortgage contains an express power of sale, add Form No. 4, Sect. I.*) :

Recital of Mortgage.

AND WHEREAS the said sum of £—— (*continue Form No. 5, Sect. I., sup.*).

State of mortgage debt and agreement for sale.

(l) These words will only be used where the mortgage is by sub-demise.

(m) If one of the vendors is a married woman and the mortgage debt is held on trust, her husband must join : Dart, 7th ed., 17 ; Wolst. Conv. Acts, 9th ed., 242. If there is no trust this will not be required : *Re West and Hardy*, 1904, 1 Ch. 145 ; 73 L. J. Ch. 91. Until the Courts decide that s. 1 of the M. W. P. Act, 1907, is effective that section cannot be relied on, but the deed need not be acknowledged.

Married woman trustee mortgagee.

(n) If only part of the property comprised in the mortgage is sold, the words “with other hereditaments” will be inserted in the recital of the

Conveyance under statutory power to Purchaser in fee simple. Variation where power expressly conferred by the Mortgage.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said Agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge) the Vendors, As Mortgagees (*o*), in exercise of the power for this purpose conferred on them by the Conveyancing and Law of Property Act, 1881 (*p*) [by the recited Mortgage], and of all other powers, hereby convey unto the Purchaser,

ALL THAT, &c. (*see Form in Sect. II., sup.*).

To HOLD unto and To THE USE of the Purchaser in fee simple discharged from all principal money and interest secured by and from all right of redemption and claims under the recited Mortgage.

IN WITNESS &c.

## No. II.

CONVEYANCE by MORTGAGEE whose MORTGAGE DEED contains POWER of SALE, and who claims ABSOLUTE OWNERSHIP as having been in POSSESSION for TWELVE (*q*) YEARS without ACKNOWLEDGMENT of MORTGAGOR'S TITLE (*r*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter

mortgage, and the usual acknowledgment for production of the mortgage and other material documents should be given by the vendors.

(*o*) Where mortgagees are selling the words "according to their estate," which are used when they merely concur, are omitted.

Conveyance should refer to power.

(*p*) The conveyance must be made in professed exercise of the power of sale conferred by the Conv. Act, 1881, s. 19, in order to give the purchaser the protection of s. 21 (2) of that Act against irregularities in the sale. The benefit of the sub-section does not accrue until after conveyance: *Life Interest, &c. Corp'n. v. Hand-in-Hand, &c. Society*, 1898, 2 Ch. 230; 67 L. J. Ch. 548.

(*q*) Twelve years are substituted for twenty years by the R. P. Lim. Act, 1874, s. 7.

Effect of conveyance by a mortgagee in possession for twelve years.

(*r*) This Precedent is intentionally prepared without recitals. In one way or another the purchaser will get a good title. If the mortgagee has acquired the fee simple free from any right of redemption under the Statutes of Limitation, he can sell as owner. If, however, any question should arise as to the completeness of the ownership, the conveyance will operate as an execution of the power of sale without any express reference to it, and thus the existence of this power, and its exercise, if required, obviate the necessity of the

called the Purchaser) of the other part, WITNESSETH, that in consideration of the sum of £—— as purchase-money to the Vendor now paid by the Purchaser (*the receipt &c.*), the Vendor, As Beneficial Owner, according to his estate and in exercise of every power, statutory or otherwise, him enabling, hereby conveys unto the Purchaser,

ALL (*parcels, see Forms in Sect. II., sup.*),

To HOLD unto and to the use of the Purchaser in fee simple.

(*Add Forms Nos. 6 and 11, Sect. III., sup., if required.*)

IN WITNESS, &c.

### No. III.

#### COVENANT to SURRENDER COPYHOLDS *by a MORTGAGEE under the statutory Power of SALE.*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*the Mortgagees*) (hereinafter called the Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part :

WHEREAS by an Indenture of Mortgage dated the —— day of ——, and made between —— (*the Mortgagor*) of the one part, and the Vendors of the other part, the said —— (*Mortgagor*) covenanted with the Vendors (*continue Form 22, Sect. I., sup.*) (s) :

Parties.

Recital of Mortgage by way of covenant to surrender; Conditional Surrender; Admittance of Mortgagees and agreement for sale.

vendor proving his uninterrupted possession for the required period, and prevent the purchaser on the other hand from depending on an unmarketable title : *Re Alison* (1879), 11 Ch. D. 284. It is immaterial if the mortgage does not contain a clause making it unnecessary for the purchaser to ascertain that any money is due on the security, or whether the required notice has been given.

If the mortgage is dated before 1882, s. 13 of Lord Cranworth's Act, 1860 (23 & 24 Vict. c. 145), relieves a purchaser, after conveyance, from inquiry as to the regularity of such a sale.

Lord Cranworth's Act.

If the mortgage is after 1881, s. 21 (2) of the Conv. Act, 1881, has the same effect.

Conv. Act, 1881.

Though Lord Cranworth's Act was repealed by s. 74 of the Conv. Act, 1881, that section preserves, with regard to mortgages made before 1882, the power of sale conferred by the former Act : *Re Solomon and Maughler* (1889), 40 Ch. D. 508; 58 L. J. Ch. 339; *Re Boucherett*, 1908, 1 Ch. 180; 77 L. J. Ch. 205. The benefit of s. 21 (2) of the Conv. Act, 1881, does not apply until after conveyance : *Life Interest, &c. Corp'n. v. Hand-in-Hand, &c. Society*, 1898, 2 Ch. 230; 67 L. J. Ch. 548.

(s) The mortgagees must be admitted before a sale. Where there has been no conditional surrender the mortgagees should, by enforcing the

How title made when mortgagees not admitted.

Covenant to  
surrender by  
Mortgagees.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge), the Vendors, in exercise of the power for this purpose conferred on them by the Conveyancing and Law of Property Act, 1881, and of all other powers, and As Mortgagees, hereby covenant (t) with the Purchaser that the Vendors will forthwith surrender into the hands of the lord of the said Manor according to the custom thereof,

ALL THOSE, &c. (*Form No. 17, Sect. II., sup.*),

To THE USE of the Purchaser and his heirs at the will of the lord according to the custom of the said Manor at and under the rents, suits and services therefor due and of right accustomed, but discharged from all principal money and interest secured by and from all right of redemption and claims under the recited Mortgage and Conditional Surrender.

(*Add Forms No. 6 and 11, Sect. III., sup., if required.*)

IN WITNESS, &c.

#### No. IV.

#### SURRENDER *by* MORTGAGEES *to* PURCHASER *of* COPYHOLDS *sold under* POWER OF SALE.

Surrender by  
Mortgagees  
under their  
power of sale,

MANOR *of* ——, *in* } BE IT REMEMBERED, that on the  
*the County of* —— } —— day of ——, 19—, A. B., of, &c., and  
C. D., of, &c. (*Mortgagees*), customary tenants of the said Manor, came before L. M., steward of the Manor out of Court, and for giving effect to a sale of the copyhold hereditaments hereinafter described to E. F., of, &c. (*Purchaser*), under the power of sale conferred on mortgagees by the Conveyancing and Law of Property Act, 1881, and in consideration of the sum of £—— paid to them by the said E. F., did surrender into the hands of the lord of the Manor by the hands and acceptance of the said steward,

covenant to surrender, require their mortgagor to surrender direct to the purchaser, or, if this is impracticable, should apply to the Court for a vesting order or an order appointing a person to surrender: T. Act, 1893, ss. 26 and 34, see also Wolst. Conv. Acts, 9th ed., 252, and cases there cited. It is usual to give the mortgagees a power of attorney to surrender to themselves.

(t) A covenant to surrender is a “conveyance” within the meaning of s. 21 (2) of the Conv. Act, 1881, see s. 2 (v). See next Precedent for the consequential surrender.

ALL, &c. (*parcels, see Forms in Sect. II., sup.*): To which hereditaments the said A. B. and C. D. were on the — day of — admitted tenants upon a Conditional Surrender by G. H. dated the — day of —, 19—,

To THE USE of the said E. F. and his heirs at the will of the lord according to the custom of the Manor at and under the rents, fines, suits and services therefor due and of right accustomed, but discharged from all right of redemption under the said Conditional Surrender (*u*).

to Purchaser  
free from  
right of  
redemption.

TAKEN, &c.

### No. V.

ASSIGNMENT of a LONG TERM created by a SETTLEMENT  
to secure PORTIONS by MORTGAGEES under their STATUTORY  
POWER of SALE.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*the Mortgagees*) (hereinafter called the Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part :

Parties.

WHEREAS by an Indenture of Settlement dated the — day of —, and made between G. H. (since deceased) of the 1st part. K. L. of the 2nd part, M. N. and O. P. (hereinafter called the Term Trustees) of the 3rd part, and X. and Y. of the 4th part (being a Settlement made in consideration of the marriage solemnised on the — day of — between the said G. H. and K. L.), the hereditaments hereinafter described were limited To THE USE of the said G. H. during his life, with remainder (subject to certain yearly rent-charges) To THE USE of the Term Trustees for the term of 1000 years, from the death of the said G. H. without impeachment for waste Upon trusts for raising by way of mortgage after the death of the said G. H., and in the event (which happened) of there being four younger children of the said marriage the sum of £— as portions for such children, and the said Settlement contained no power of appointing a new trustee of the said term after the death of the said G. H. :

Recital of  
Settlement.

(*u*) The stamp will be on this surrender: Stamp Act, 1891, s. 61 (b). For a precedent of an admission under the above surrender, see Prec. VII., Group A, p. 330, *sup.*; the usual covenants against incumbrances are implied under the covenant to surrender, see last Precedent.

Recital of death of tenant for life.

AND WHEREAS the said G. H. died on the — day of — :

Recital of death of a Trustee of the term.

AND WHEREAS the said O. P. died on the — day of — :

Recital of appointment of a new Trustee of the term.

AND WHEREAS by an Indenture of Appointment dated the — day of —, and made between the said M. N. of the one part and R. S. of the other part, the said M. N., in exercise of the power for that purpose conferred on him by the Trustee Act, 1893, appointed the said R. S. to be a Trustee of the said term of 1000 years and to act jointly with the said M. N., and the said Indenture contained a declaration duly vesting the said term in the said M. N. and R. S. Upon the trusts thereof declared by the recited Settlement :

Recital of Mortgage of a portion of term.

AND WHEREAS by an Indenture of Mortgage dated the — day of —, and made between the said M. N. and R. S. of the one part and the Vendors of the other part, the said M. N. and R. S. assigned the hereditaments hereinafter described to the Vendors for the residue of the said term of 1000 years by way of mortgage for securing payment to the Vendors on a day therein mentioned and since passed of the principal sum of £—, with interest thereon as therein mentioned :

Recital that principal and interest due and agreement for sale.

AND WHEREAS the said sum of £— and an arrear of interest thereon are still due to the Vendors upon the security of the recited Mortgage and they have agreed to sell to the Purchaser free from incumbrances the hereditaments hereinafter described for the residue of the said term of 1000 years at the price of £— :

Assignment of the property to the Purchaser for the residue of the 1000 years term.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge) the Vendors, in exercise of the power for this purpose conferred on them by the Conveyancing and Law of Property Act, 1881, and of all other powers, and As Mortgagees, hereby assign unto the Purchaser

ALL THOSE, &c. (*see Forms, Sect. II., sup.*),

To HOLD unto the Purchaser for the residue of the said term (*uu*) of 1000 years created by the recited Settlement, discharged from all principal money and interest secured by and from all right of redemption and claims under the recited Mortgage.

IN WITNESS, &c.

Enlargement of long term.

(*uu*) The purchaser can enlarge this term into a fee simple : Conv. Act, 1881, s. 65, as amended by Conv. Act, 1882, s. 11.

## No. VI.

ASSIGNMENT *of* LEASEHOLDS *by* MORTGAGEES *by* SUB-  
DEMISE *under the* STATUTORY POWER *of* SALE, *where the*  
MORTGAGE *contains a* DECLARATION *of* TRUST *of the* HEAD  
TERM *but no* POWER *of* ATTORNEY *or* POWER *to appoint*  
*a* NEW TRUSTEE.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and Parties.  
C. D., of, &c. (*the Mortgagees*) (hereinafter called the Vendors), of  
the one part, and E. F., of, &c. (hereinafter called the Purchaser),  
of the other part :

WHEREAS by an Indenture of Lease dated the — day of — Recital of  
(*Recite Lease, as in Form No. 28, Sect. I., sup.*) : Lease.

AND WHEREAS by an Indenture of Mortgage dated the — Recital of  
day of — (*Form 29, Sect. I., sup., down to the words “as they* Mortgage by  
*should from time to time direct”*) : sub-demise.

AND WHEREAS the said sum of £—— and an arrear of interest Recital that  
thereon are due to the Vendors upon the security of the recited principal and  
Mortgage, and they have agreed to sell to the Purchaser free interest due  
from incumbrances the hereditaments demised by the recited and agreement  
Lease for the residue of the derivative term created by the recited for sale.  
Mortgage, Together with the benefit of the recited Declaration of  
Trust(*x*), at the price of £—— :

NOW THIS INDENTURE WITNESSETH that in pursuance Assignment of  
of the said agreement and in consideration of the sum of £—— the derivative  
now paid by the Purchaser to the Vendors (the receipt of which term.  
sum the Vendors hereby acknowledge), the Vendors, in exercise  
of the power for this purpose conferred on them by the Convey-  
ancing and Law of Property Act, 1881, and of all other powers,  
and As Mortgagees, hereby assign unto the Purchaser

ALL the premises comprised in and demised by the recited  
Lease,

To hold unto the Purchaser for the residue of the derivative  
term created by the recited Mortgage, discharged from all

(*x*) Where there is no power to appoint a new trustee of the head term or  
power of attorney to get it in, only the derivative mortgage term can be  
assigned with the benefit of the declaration of trust. To get in the head  
term a vesting order will be required. Under Lord Cranworth's Act, 1860  
(23 & 24 Vict. c. 145), a mortgagee by sub-demise had power to convey the  
head term. Under Conv. Act, 1881, only the subject-matter of the mortgage  
can be conveyed.

principal money and interest thereby secured and from all right of redemption and claims thereunder, Together with the benefit of the Declaration of Trust of the Head Term contained in the recited Mortgage.

(Add Form No. 11, Sect. II., if required.)

IN WITNESS, &c.

## No. VII.

ASSIGNMENT of LEASEHOLDS by MORTGAGEES by SUB-DEMISE under the STATUTORY POWER of SALE, where the HEAD TERM is assigned to the PURCHASER under a POWER of ATTORNEY contained in the MORTGAGE; VARIATIONS where the MORTGAGOR joins in person.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the 1st part, C. D., of, &c., and E. F., of, &c. (hereinafter called the Vendors), of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part:

Recital of Lease.

WHEREAS by an Indenture of Lease dated the — day of — (Recite Lease as in Form No. 28, Sect. I., sup., to the Borrower, defining the term as “the Head Term”):

Recital of Mortgage by sub-demise.

AND WHEREAS by an Indenture of Mortgage dated the — day of — (Form No. 29, Sect. I., sup., down to the words “as they should from time to time direct,” and continue as follows:—) And the Borrower thereby irrevocably appointed the Vendors to be his attorneys to execute in his name and on his behalf any deed of assignment of the Head Term which might be required to vest the same in a Purchaser (y):

Recital that principal and interest due and agreement for sale.

AND WHEREAS the said sum of £—— and an arrear of interest thereon are due to the Vendors upon the security of the recited Mortgage, and they have agreed to sell to the Purchaser free from incumbrances the hereditaments demised by the recited Lease for the residue of Head Term at the price of £——:

[Recital of agreement by the Mortgagor to join.]

[AND WHEREAS the Borrower has agreed to join in these presents for the purpose of assigning the Head Term to the Purchaser (z):]

(y) If the mortgagor joins personally the reference to the power of attorney will not be required. As to the effect of an irrevocable power of attorney for value, see Wolst. Conv. Acts, 9th ed., 6, 79, and 159–162.

(z) The words in square brackets will only be required if the mortgagor joins in person.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge), the Borrower, for the purpose of assigning the Head Term [and by the direction of the Vendors (a)], As Beneficial Owner, hereby assigns, and the Vendors, in exercise of the power for this purpose conferred on them by the Conveyancing and Law of Property Act, 1881, and of all other powers, and As Mortgagees, hereby assign and surrender unto the Purchaser

Assignment of the Head Term and derivative term to the Purchaser.

ALL the premises comprised in and demised by the recited Lease,

To HOLD unto the Purchaser for the residue of the Head Term created by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the recited Lease reserved and contained and henceforth on the part of the lessee to be paid, observed, and performed, but discharged from all principal money and interest secured by and from all right of redemption and claims under the recited Mortgage, and To THE INTENT that the said derivative term shall henceforth merge and be extinguished in the Head Term.

AND the Purchaser hereby covenants with the Borrower and also with the Vendors (b), and as a separate covenant with each of them, that the Purchaser or the persons deriving title under him will henceforth (*continue as in Form No. 5, Sect. III., sup.*).

Covenant to pay rent, &c.

IN WITNESS whereof the said C. D. and E. F. have hereunto set their respective hands and seals, and by virtue of the power of attorney conferred on them by the recited Mortgage have also hereunto set the hand and seal of the said A. B., the day and year first above written (c).

|   |        |
|---|--------|
| C. D. ....                                      | (L.S.) |
| E. F. ....                                      | (L.S.) |
| A. B. [by C. D. and E. F., his attorneys] ..... | (L.S.) |

(a) The words in square brackets will only be required if the mortgagor joins in person.

(b) The mortgagees will not be liable under the provisions of the lease by reason of their having exercised the power of attorney, but they should be made covenantees.

(c) The ordinary testimonium clause will be substituted if the mortgagor joins in person.

## No. VIII.

ASSIGNMENT of LEASEHOLDS by MORTGAGEES by SUB-DEMISE under the STATUTORY POWER, where the HEAD TERM is vested in a NEW TRUSTEE under a power in the MORTGAGE to remove the MORTGAGOR and to appoint NEW TRUSTEES.

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Vendors), of the 1st part, E. F., of, &c. (hereinafter called the Purchaser), of the 2nd part, and G. H., of, &c. (hereinafter called the Trustee), of the 3rd part.

Recital of Lease. WHEREAS by an Indenture of Lease dated the — day of — (Recite Lease as in Form No. 28, Sect. I., sup., defining the Lessee as “the Borrower,” and the term as “the Head Term”):

Recital of Mortgage by sub-demise. AND WHEREAS by an Indenture of Mortgage dated the — day of — (Form No. 29, Sect. I., sup., down to the words “for the purposes of the Trust aforesaid”):

Recital that principal and interest due and agreement for sale. AND WHEREAS the said sum of £—— and an arrear of interest thereon are due to the Vendors upon the security of the recited Mortgage and they have agreed to sell to the Purchaser free from incumbrances the hereditaments demised by the recited Lease for the residue of the derivative term created by the recited Mortgage at the price of £——, and have also agreed, in exercise of the power conferred on them by the recited Mortgage, to remove the Borrower from being a trustee of the Head Term and to appoint the Trustee to be a trustee thereof in his place:

NOW THIS INDENTURE WITNESSETH as follows:—

Assignment to purchaser of the mortgage term. 1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge), the Vendors, in exercise of the power for this purpose conferred on them by the Conveyancing and Law of Property Act, 1881, and of all other powers, and As Mortgagees, hereby assign unto the Purchaser

ALL the premises comprised in and demised by the recited Lease,

TO HOLD unto the Purchaser for the residue of the derivative term created by the recited Mortgage, Together with the benefit

of the trust of the Head Term thereby declared, but discharged from all principal money and interest secured by and from all right of redemption and claims under the recited Mortgage.

2. IN further pursuance of the said agreement the Vendors, in exercise of the power for this purpose conferred on them by the recited Mortgage and of all other powers, hereby remove the Borrower or other the person or persons in whom the Head Term is now vested from being a trustee or trustees thereof, and hereby appoint the Trustee to be a trustee thereof in his or their place (d).

Appointment  
of New Trustee  
of Head Term.

3. THE Vendors hereby declare that the premises comprised in recited Lease shall forthwith vest in the Trustee for the residue of the Head Term for the purposes of the Trust created by the recited Mortgage (e).

Vesting  
declaration.

(Add Form No. 11, Sect. III., if required.)

IN WITNESS, &c.

#### No. IX.

ASSIGNMENT *by the TRUSTEE of the HEAD TERM to the PURCHASER (to be INDORSED on or WRITTEN UNDER the last Precedent).*

THIS INDENTURE, made (f), &c., BETWEEN the within [or above] named G. H. (hereinafter called the Trustee) of the one part, and the within [or above] named E. F. (hereinafter called the Purchaser) of the other part, WITNESSETH that the Trustee, at the request of the Purchaser and As Trustee, hereby assigns unto the Purchaser,

Parties.

ALL the premises comprised in and demised by the Lease mentioned in the within [or above] written Indenture.

To HOLD unto the Purchaser for the residue of the term granted by the said Lease, but subject to the rent and the lessee's covenants and the conditions by and in the said Lease reserved

(d) Inasmuch as a person cannot be a trustee for himself where he is the sole beneficiary, it is conceived that the practice sometimes adopted of appointing the purchaser to be the new trustee is open to question. The next Precedent should be used for getting in the head term.

Where person  
cannot be  
trustee for  
himself

(e) See *London and County Bank v. Goddard*, 1897, 1 Ch. 642; 66 L. J. Ch. 261.

(f) To bear date the day after the assignment by the mortgagees.

and contained, and henceforth on the part of the lessee to be paid, observed, and performed. And to the intent that the derivative term assigned by the within [above] written Indenture shall merge in the term created by the said Lease.

(Add covenant by Purchaser with Trustee to pay rent, &c., Form No. 5, Sect. III., sup.)

IN WITNESS, &c.

### No. X.

#### CONVEYANCE of FREEHOLDS, COVENANT to surrender COPYHOLDS, and ASSIGNMENT of LEASEHOLDS by THE EXECUTORS of a MORTGAGEE under the STATUTORY POWER of SALE.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Vendors (g)), of the 1st part, E. F., of, &c. (hereinafter called the Purchaser), of the 2nd part, and G. H., of, &c. (hereinafter called the Trustee), of the 3rd part :

Recital of Lease.

WHEREAS by an Indenture of Lease dated the — day of — (*Recite Lease as in Form No. 28, Sect. I., sup., defining the Lessee as "the Borrower" and the term as "the Head Term"*) :

Recital of Mortgage of freeholds, copyholds, and leaseholds.

AND WHEREAS by an Indenture of Mortgage dated the — day of —, and made between the Borrower of the one part, and — (hereinafter called the Mortgagee) of the other part, the Borrower conveyed the freehold hereditaments hereinafter described to the Mortgagee in fee simple and covenanted to surrender the copyhold hereditaments hereinafter described to the use of the Mortgagee and his heirs according to the custom of the Manor of —, and also demised to the Mortgagee the hereditaments comprised in the recited Lease for the residue of the Head Term (except the last three days thereof) by way of mortgage for securing payment to the Mortgagee on a day therein mentioned and since passed of the principal sum of £—, with interest thereon as therein mentioned, And the Borrower thereby covenanted with the Mortgagee that the Borrower and the persons deriving title under him would (subject to the right of redemption thereunder) thenceforth stand possessed of the Head Term Upon trust to dispose of the same as the Mortgagee or the persons deriving title under him should

(g) The executors are defined as the vendors in this Precedent.

direct, And the said Mortgage contained a power for the Mortgagee or the persons deriving title under him to remove the Borrower or the persons deriving title under him from being trustee or trustees and to appoint a new Trustee or new Trustees for the purposes of the trust aforesaid (*h*) :

AND WHEREAS on the — day of — the Borrower out of Court surrendered the said copyhold hereditaments into the hands of the lord of the said Manor by the hands and acceptance of his steward according to the custom of the said Manor, To THE USE of the Mortgagee and his heirs at the will of the lord, according to the said custom and by and under the rents, fines, suits and services, therefor due and of right accustomed, but subject to a condition for making void such surrender if the Borrower should on a day therein mentioned and since passed pay to the Mortgagee the said sum of £—, with interest thereon as therein mentioned :

Recital of conditional surrender of copyholds to the Mortgagee.

AND WHEREAS the Mortgagee died on the — day of —, having by his Will dated the — day of — appointed the Vendors to be his executors (*i*), who on the — day of —, duly proved his said Will at the Principal [— District] Probate Registry :

Recital of death of Mortgagee and of his Will and probate.

AND WHEREAS the Mortgagee was never admitted (*k*) to the said

Recital that Mortgagee

(*h*) It is assumed in this Precedent that the mortgage contains the usual powers of removing the mortgagee and appointing a new trustee of the head term, see *London and County Bank v. Goddard*, 1897, 1 Ch. 642; 66 L. J. Ch. 261. If this is not the case, see Form No. 29, Sect. I., and Pres. VI. and VII., pp. 373 and 374, *sup*.

(*i*) It is assumed that the mortgagee died after 1881. Under s. 30 of the Conv. Act, 1881, freehold and leasehold hereditaments held by way of mortgage devolve upon the personal representatives of the mortgagee. This section also applies to copyholds where the mortgagee is not admitted, see Copyhold Act, 1894, s. 88; also Wolst. Conv. Acts, 9th ed., 95.

Devolution of copyholds on death of mortgagee.

(*k*) If the mortgagee was admitted (see *Re Mills* (1888), 37 Ch. D. 312; 40 *ib.* 14; 57 L. J. Ch. 466), the copyholds will either pass to his devisee of mortgage estates or will devolve upon his customary heir; in the latter case the above Precedent will be varied as follows : —

The admittance of the mortgagee will be recited before the recital of his death, &c., and the following words will be substituted for the recital of the admittance of the executors :—“ And whereas the Mortgagee died intestate in respect of the said copyhold hereditaments, which accordingly devolved upon —, his customary heir, who on the — day of — was duly admitted to the said hereditaments

Variations where the Mortgagee was admitted and died intestate as to mortgage estates.

never admitted  
to copyholds  
and admit-  
tance of  
Vendors.

copyhold hereditaments, but on the — day of — the Vendors were duly admitted to the said hereditaments, pursuant to the recited surrender, To HOLD to them and their heirs by copy of court roll at the will of the lord according to the custom of the said Manor by and under the rents, suits and services therefor due and of right accustomed :

Recital that  
principal and  
interest due  
and agreement  
for sale.

AND WHEREAS the said sum of £—, with an arrear of interest thereon, is now owing to the Vendors as such executors as aforesaid upon the security of the recited Mortgage and they have agreed to sell the said freehold, copyhold, and leasehold hereditaments to the Purchaser free from incumbrances at the price of £— :

Conveyance  
of freeholds.

NOW THIS INDENTURE WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge), the Vendors, in exercise of the power for this purpose conferred on them by the Conveyancing and Law of Property Act, 1881, and of all other powers, and As Personal Representatives of the Mortgagee (since deceased), hereby convey unto the Purchaser

ALL THOSE, &c. (*Forms in Sect. II., sup.*),

To HOLD unto and To THE USE of the Purchaser in fee simple, discharged from all principal money and interest secured by and from all right of redemption and claims under the recited Mortgage.

Covenant to  
surrender  
copyholds.

2. For the consideration aforesaid the Vendors, in exercise of the power for this purpose conferred on them by the Conveyancing and Law of Property Act, 1881, and of all other powers, and As Personal Representatives of the Mortgagee, hereby covenant with the Purchaser that the Vendors will [cause the said — (*the customary heir*) and all other necessary parties to (*l*)]

pursuant to the recited surrender, To HOLD to him and his heirs by copy of court roll at the will of the lord according to the custom of the said Manor by and under the rents, suits and services therefor due and of right accustomed."

(*l*) The words in square brackets will be used where the mortgagee was admitted and the copyholds accordingly became vested in his devisee or customary heir. See next Precedent for a surrender by the customary heir to the purchaser to give effect to this covenant.

forthwith surrender into the hands of the lord of the said Manor according to the custom thereof

ALL THOSE, &c. (*Form No. 17, Sect. II., sup.*),

To THE USE of the Purchaser and his heirs at the will of the lord according to the custom of the said Manor at and under the rents, suits and services therefor due and of right accustomed, but discharged from all principal money and interest secured by and from all right of redemption and claims under the recited Mortgage and Conditional Surrender.

3. For the consideration aforesaid the Vendors, in exercise of the power for this purpose conferred on them by the Conveyancing and Law of Property Act, 1881, and of all other powers, and As Personal Representatives of the Mortgagee, hereby assign unto the purchaser

Assignment of derivative term in leaseholds.

ALL the premises comprised in and demised by the recited Lease,

To HOLD unto the Purchaser for the residue of the derivative term created by the recited Mortgage, Together with the benefit of the trust of the Head Term thereby declared, but discharged from all principal money and interest secured by and from all right of redemption and claims under the recited Mortgage.

4. IN exercise of the power for this purpose conferred on them by the recited Mortgage (*continue as in clause 2, Precedent VIII., p. 377, sup.*).

Appointment of a new Trustee of the Head Term.

5. THE Vendors hereby declare (*continue as in clause 3 of Precedent VIII., sup. (m)*).

Vesting declaration.

IN WITNESS, &c.

## NO. XI.

### SURRENDER of COPYHOLDS by the CUSTOMARY HEIR of a MORTGAGEE to a PURCHASER.

The MANOR of —, } WHEREAS on the — day of —  
in the County of — } A. B. (*the Mortgagor*), of, &c., out of  
Court surrendered the hereditaments hereinafter described into the hands of the lord of the Manor by the hands and acceptance of his steward according to the custom of the Manor, To THE

Recital of Conditional Surrender.

(m) See last Precedent for an assignment of the head term by the trustee to the purchaser.

USE of C. D. (*the Mortgagee*) and his heirs at the will of the lord according to the said custom and by and under the rents, suits and services therefor due and of right accustomed, but subject to a condition for making void such Surrender if the said A. B. should on a day therein mentioned and since passed pay to the said C. D. the sum of £——, with interest thereon as therein mentioned :

Recital of  
admittance of  
mortgagee.

AND WHEREAS on the —— day of —— the said C. D. was duly admitted to the said hereditaments pursuant to the recited Surrender, To HOLD to him and his heirs by copy of court roll at the will of the lord according to the said custom by and under the rents, suits and services therefor due and of right accustomed :

Recital of  
death of  
Mortgagee  
intestate.

AND WHEREAS on the —— day of —— the said C. D. died intestate<sup>(u)</sup> so far as regards the said hereditaments leaving E. F., of, &c., his heir according to the custom of the said Manor, but having by his Will dated —— appointed X. and Y. to be his executors, who duly proved the same on the —— at the —— Probate Registry :

Recital of  
admittance of  
customary  
heir.

AND WHEREAS on the —— day of —— the said E. F. was duly admitted to the said hereditaments, To HOLD to him and his heirs by copy of court roll at the will of the lord according to the custom of the Manor by and under the rents, suits and services therefor due and of right accustomed :

Recital of  
covenant to  
surrender

AND WHEREAS by an Indenture<sup>(o)</sup> dated the —— day of ——, and made between the said X. and Y. (*the executors of the Mortgagee*) of the one part and G. H. (*the Purchaser*), of, &c., of the other part, in consideration of the sum of £—— paid by the said G. H. to the said X. and Y., in exercise of their statutory power of sale, the said X. and Y. covenanted with the said G. H. that they would cause the said E. F. to surrender to the lord of the Manor the said hereditaments, To THE USE of the said G. H. and his heirs according to the custom of the Manor, discharged from all right of redemption under the recited Conditional Surrender :

Surrender to  
the use of the

NOW BE IT REMEMBERED, that on the —— day of ——

(u) By reason of s. 88 of the Copyhold Act, 1894, s. 30 of the Conv. Act, 1881, no longer applies to copyholds to which the mortgagee was admitted : *Re Mills* (1888), 37 Ch. D. 312 ; 40 *ib.* 14 ; 57 L. J. Ch. 466.

(o) See last Precedent.

the said E. F. came before L. M., of, &c., the steward of the said Manor, out of Court and pursuant to the covenant contained in the last recited Indenture surrendered into the hands of the lord of the Manor by the hands and acceptance of his said steward according to the custom of the manor

Purchaser and his heirs.

ALL THOSE, &c. (*Form No. 17, Sect. II., sup.*).

TO THE USE of the said G. H. and his heirs at the will of the lord according to the custom of the Manor at and under the rents, suits and services therefor due and of right accustomed (*p*).

THIS Surrender was taken and accepted the day  
and year last above written by me.

L. M. (*steward*),  
Steward of the Manor.

# GROUP D.—CONVEYANCES ON SALES BY CO-OWNERS.

## No. 1.

### CONVEYANCE of FREEHOLDS *by* JOINT TENANTS (*not being* TRUSTEES) or *by* TENANTS *by* ENTIRETIES.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c., or, *in the case of a tenancy by entireties*, and C. B., his wife, who were married on the — day of —, 18— (hereinafter called the Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part :

Parties.

WHEREAS G. H., being at his death seised in fee simple in possession free from incumbrances, duly made his Will dated the — day of —, and thereby, after appointing X. and Y. to be his executors, devised the hereditaments hereinafter described  
TO THE USE of the Vendors and their heirs (*q*) :

Recital of Will creating joint tenancy.

AND WHEREAS the said testator died on the — day of — without having revoked or altered his said Will, which was on the

Recital of death of

(*p*) For a Precedent of Admittance, see *Proc. VII., Group A, p. 330, sup.*

(*q*) A gift to husband and wife before 1882 created a tenancy by entireties, as they were considered one person at law. They each held the entirety, and if they made no joint disposition the property belonged to the survivor.

Tenancy by entireties.

Since the M. W. P. Act, 1882, it would seem that they no longer take as one person, but as tenants in common or joint tenants, as the case may be,

M. W. P. Act, 1882.

testator and  
probate.

— day of — duly proved at the Principal Probate Registry by the executors therein named :

Agreement  
for sale.

AND WHEREAS the Vendors have agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £— :

Conveyance by  
joint tenants.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said Agreement and in consideration of the sum of £— now paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge), the Vendors, As Beneficial Owners (r) [do and each of them As Beneficial Owner and by the direction of the other of them doth (s)], hereby convey unto the Purchaser

ALL THOSE, &c. (*see Forms in Sect. II., sup.*),

To HOLD unto and To THE USE of the Purchaser in fee simple.

(*Add, if required, acknowledgment and undertaking, Form No. 6, Sect. III.; also Form 11, Sect. III., if required.*)

IN WITNESS, &c. (t).

in the same way as if they were unmarried, see *Thoruley v. T.*, 1893, 2 Ch. 229; 62 L. J. Ch. 370; and see *Dunbar v. D.*, 1909, 2 Ch. 639.

Gift to  
husband and  
wife and third  
person.

Under a gift to husband and wife and a third person, whether before or after the M. W. P. Act, 1882, if there are no provisions to the contrary the husband and wife take one moiety and the third person the other moiety: see *Re Jupp* (1888), 39 Ch. D. 148; 57 L. J. Ch. 774; *Re March* (1884), 27 Ch. D. 166; 54 L. J. Ch. 143; *Re Dixon* (1889), 42 Ch. D. 306; *Re Gue* (1892), 67 L. T. 823; also Wolst. Conv. Acts, 9th ed., 281.

Implied  
covenants.

(r) This implies a joint covenant by the vendors as to the entirety that, notwithstanding anything by them, &c., they have full power, &c. Apart from express contract it seems they would be bound to give a joint covenant. Where they convey separately each would covenant for his own interest, see Co. Lit. 186 a.

(s) The words in square brackets imply a several covenant by each of the vendors that, notwithstanding anything by him, &c., he, with the concurrence of the other, has full power, to convey, &c.

When pur-  
chaser entitled  
to joint and  
several  
covenants.

Where the sale is made by vendors without disclosing the nature of their interests and without any special agreement as to covenants, it is conceived that the purchaser may be entitled, whatever may be the nature of those interests as shown by the abstract, to joint and several covenants as to the entirety: *National Society, &c. v. Gibbs*, 1900, 2 Ch. 280; 69 L. J. Ch. 457; see also Dart, 7th ed., 573.

Acknowledg-  
ment by

(t) If the marriage occurred before 1882 and the property was acquired

No. II.

CONVEYANCE *of* FREEHOLDS *by* TWO TENANTS *in* COMMON *or*  
*by* TWO CO-PARCENERS.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., Spinster, Parties.  
of the 1st part, C. B., of, &c., Spinster, of the 2nd part, and E. F.,  
of, &c. (hereinafter called the Purchaser), of the 3rd part.

WHEREAS the said A. B. and C. B. (hereinafter called the Vendors) are now seised in fee simple in possession free from Recital of  
incumbrances as tenants in common in equal shares of the seisin of  
hereditaments hereinafter described (*u*): tenants in  
common.

[WHEREAS G. H., being at his death seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, died intestate (*x*) on the — day of — : [Recital of  
seisin, intestacy, and  
devolution  
upon Vendors  
as co-  
parceners.]

AND WHEREAS the said G. H. had two children, and no more, namely, the said A. B. and C. B. (hereinafter called the Vendors), upon whom the hereditaments hereinafter described devolved as his heiresses at law and as co-parceners:]

AND WHEREAS the Vendors have agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £— : Agreement  
for sale.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sums of £— and £— now paid by the Purchaser to the Vendors (the receipt of which two sums the Vendors hereby respectively acknowledge), each of the Vendors as to her undivided moiety and As Beneficial Owner hereby conveys unto the Purchaser

ALL THAT, &c. (*see Forms in Sect. II., sup.*),

To HOLD unto and To THE USE of the Purchaser in fee simple.

before 1882 the deed should be acknowledged under the Fines and Recoveries Act as amended by the Conv. Act, 1882, s. 7; *Johnson v. Clark*, 1908, 1 Ch. 303; 77 L. J. Ch. 127. married  
woman.

(*u*) Where the vendors have acquired their interests under a simple conveyance this recital of seisin is sufficient, but it is often found necessary to recite the instrument under which the interests arose.

(*x*) Except in the case of land to which the custom of gavelkind applies, where male heirs take as co-parceners, a tenancy in co-parcenary is confined to females. If the intestate died after 1897, then the conveyance by the administrator to the two co-parceners must be recited: L. T. Act, 1897, Pt. I. Gavelkind.  
Conveyance  
by adminis-  
trator.

(Add, if required, acknowledgment and undertaking, Form No. 6, Sect. III.; also Form No. 11, Sect. III., if required.)

IN WITNESS, &c.

### No. III.

RELEASE *by* ONE JOINT TENANT, TENANT *in* COMMON, *or*  
Co-PARCENER *to the* OTHER *on a* SALE.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., Spinster (hereinafter called the Vendor), of the one part, and C. D., of, &c. Spinster (hereinafter called the Purchaser), of the other part:

Recital of  
creation of  
interests or  
seisin.

WHEREAS (*Recite creation of the tenancy or seisin as in last two Precedents*):

Agreement  
for sale.

AND WHEREAS the Vendor has agreed to sell all her interest in the hereditaments hereinafter described to the Purchaser free from incumbrances at the price of £——:

Release by  
co-owner.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys and releases unto the Purchaser

ALL THAT [the undivided moiety] [one-third share] [the estate and interest] of the Vendor in ALL THOSE &c. (*See Forms, Sect. II., sup.*),

To HOLD unto and To THE USE of the Purchaser in fee simple (*y*). (*Add Form No. 11, Sect. III., sup., if required.*)

IN WITNESS, &c.

### No. IV.

ASSIGNMENT *by the* OWNERS *of* TWO SHARES *in* MONEY *to*  
*arise under a* TRUST *for* SALE *of* FREEHOLD LAND, *the*  
OWNER *of the* remaining THIRD SHARE *being the* PUR-  
CHASER. *who* ELECTS *to take the* entirety *as* REAL ESTATE.

Parties.

THIS INDENTURE (*z*), made, &c., BETWEEN A. B., of, &c. (*one Vendor*), of the 1st part, C. D., of, &c. (*the other Vendor*), of the 2nd

(*y*) In some cases it may be desirable for the co-owners to convey the land to a grantee to the uses required.

(*z*) Notice of this assignment should be given to the trustees of the Will, from whom the legal estate should be got in on the death of the widow.

part, and E. F., of, &c. (hereinafter called the Purchaser), of the 3rd part:

WHEREAS G. H., being at his death seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, duly made his Will dated the — day of —, and thereby, after appointing X. and Y. to be his executors and trustees, devised all his real estate (including the hereditaments hereinafter described) to them Upon trust to pay the rents and profits thereof to his widow, J. H., during her life, and after her death to sell the same and to stand possessed of the net proceeds of such sale In Trust for all or any his children or child living at his death who should attain the age of twenty-one years, and if more than one in equal shares :

Recital of Will.

AND WHEREAS the said testator died on the — day of — without having revoked or altered his said Will (except by a Codicil thereto dated the — day of —, which did not affect the aforesaid devise of his real estate), and which said Will and Codicil were on the — day of — duly proved at the Principal Probate Registry by the said X. and Y.:

Recital of death of testator and probate

AND WHEREAS the said testator had five children, and no more, namely, two children who died in his lifetime and the said A. B., C. D., and the Purchaser, who have attained the respective ages of twenty-one years, and accordingly are each entitled (subject to the life interest of the said J. H.) to a one-third share in the proceeds of sale to arise from the hereditaments hereinafter described :

Recital of interests of testator's children.

AND WHEREAS the said A. B. and C. D. have agreed to sell their respective shares in the money to arise from the sale of the hereditaments hereinafter described and in the rents and profits thereof which may accrue after the death of the said J. H. until sale at the price of £—— :

Agreement for sale.

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid in moieties by the Purchaser to the said A. B. and C. D. (the receipt of which sums of £—— and £—— the said A. B. and C. D. hereby respectively acknowledge), each of them the said A. B. and C. D. as to his one-third share, and As Beneficial Owner, hereby assigns and releases unto the Purchaser

Release of shares in proceeds of sale of freeholds.

ALL THOSE the two respective third shares of the said A. B. and C. D. in the money to arise from the sale of ALL THOSE, &c. (*describe the particular land*) devised by the recited Will of the

said G. H. and in the rents and profits thereof which may accrue after the death of the said J. H. until sale, And all other (if any) the interests of the said A. B. and C. D. in the said hereditaments,

To hold unto the Purchaser absolutely or in fee simple.

Election by Purchaser to take entirely as real estate.

2. THE Purchaser hereby declares that after the death of the said J. H., and provided that the aforesaid hereditaments shall not be sold by her during her lifetime [under the trust for sale declared by the recited Will or (a)] under the powers conferred by the Settled Land Acts, 1882 to 1890, the said X. and Y. or other the trustees for the time being of the recited Will shall stand possessed of the said hereditaments, In Trust for the Purchaser in fee simple as real estate, discharged from the trust for sale contained in the recited Will, but nothing herein contained shall affect the rights and powers of such trustees or trustee by virtue of section sixteen of the Settled Land Act, 1890, and for such purposes the trust for sale shall be deemed to remain in force (b). (*Add Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

No. V.

CONVEYANCE of FREEHOLDS by a SURVIVING PARTNER and the REPRESENTATIVES of a DECEASED PARTNER.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*surviving partner*), of the 1st part, C. D., of, &c., and E. F., of, &c. (*executors of deceased partner*) (c), of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part:

(a) The words in square brackets will not be used unless there is an immediate trust for sale; if used the words "by her during her lifetime" should be omitted. Under the Will as recited there is only a future trust for sale, the widow is tenant for life (S. L. Act, 1882, s. 2), and the trustees are trustees for the purposes of the Acts: S. L. Act, 1890, s. 16.

Variation if there is an immediate trust for sale.

(b) The last paragraph, referring to s. 16, will be omitted if there is an immediate trust for sale. Where there is such a trust title is made thereunder, unless an order is obtained under S. L. Act, 1884, s. 7.

Partnership property, devolution of.

(c) S. 20 (2) of the Partnership Act, 1890, provides that the legal estate in any land forming partnership property shall devolve according to the nature and tenure thereof and the general rules of law applicable thereto, but in trust so far as necessary for the persons beneficially interested. It is usual to insert in a conveyance to partners a provision enabling the survivors to dispose of the property and give valid receipts without the concurrence of the personal representative of a deceased partner, see Prec. No. IV., Sect. II., Group A., p. 481, *inf.* Where this clause is omitted the personal representatives

WHEREAS at the date of the execution of the Indenture herein- after recited the said A. B. was carrying on business in partnership with J. K. (since deceased) :

Recital of partnership.

AND WHEREAS by an Indenture dated the —— day of ——, and made between —— of the one part, and the said A. B. and J. K. of the other part, the hereditaments hereinafter described were conveyed to the said A. B. and J. K. in fee simple as joint tenants and as part of their partnership property (*set out the power, if any, for the surviving partner to give receipts*) :

Recital of conveyance to partners.

AND WHEREAS the said J. K. died on the —— day of —— having by his Will appointed the said C. D. and E. F. to be his executors, who on the —— day of —— duly proved the same at the Principal [—— District] Probate Registry :

Recital of death, and Will of deceased partner.

AND WHEREAS the said A. B., with the concurrence of the said C. D. and E. F., has, for the purpose of winding up the said business, agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £—— :

Agreement for sale.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the said A. B. (*d*) with the consent of the said C. D. and E. F. (the receipt of which sum the said A. B. and the payment of which sum the said C. D. and E. F. hereby respectively acknowledge), the said A. B., As Beneficial Owner, hereby conveys and the said C. D. and E. F., As Personal Representatives of the said J. K., deceased, hereby release and confirm unto the Purchaser

Conveyance by surviving partner.

ALL THAT, &c. (*Forms in Sect. II., sup.*),

To HOLD unto and To THE USE of the Purchaser in fee simple.

(*Add, if required, acknowledgment and undertaking, Form No. 6, Sect. III., sup.*)

IN WITNESS, &c.

must join. S. 22 of the Act converts land held as partnership property into personal estate, unless there is a contrary intention, see Dart, 7th ed., 964 *et seq.* As to the principle regulating the devolution of land held for a partnership or other common object, see *Re Wilson*, 1893, 2 Ch. 310; 62 L. J. Ch. 781; see also *Davis v. D.*, 1894, 1 Ch. 393; 63 L. J. Ch. 219; *Wray v. W.*, 1905, 2 Ch. 349; 74 L. J. Ch. 687.

(*d*) The surviving partner is generally the proper person to receive and apply the purchase-money; he may under the Articles have a power of attorney to act on behalf of the deceased partner; in such cases the personal representatives need not concur.

Where personal representatives need not join.

## No. VI.

CONVEYANCE of FREEHOLDS to give effect to a SALE of  
TRUST PROPERTY by the BENEFICIARIES to ONE of the  
TRUSTEES.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*the trustees for sale*, hereinafter collectively called the Vendors), of the 1st part, E. F., of, &c., Widow (*tenant for life*), of the 2nd part, G. F., of, &c., and K. F., of, &c. (*persons entitled in reversion*, hereinafter called the Reversioners), of the 3rd part, the said C. D. of the 4th part, and X., of, &c. (*grantee to uses*), of the 5th part :

Recital of Will  
devising the  
land to the  
Vendors upon  
trust for sale,  
of death of  
Testator and  
Probate.

WHEREAS M. N., being at his death (*continue as in Form No. 16, Sect. I., sup., substituting for the words "Upon the trusts therein mentioned" at the end of the recital of the Will the following words*): Upon trust to invest the net proceeds of sale as therein mentioned and to pay the annual income thereof and the rents and profits of the premises until sale to the said E. F., his widow, during her life, and after her death (as to both capital and income) In trust for all or any his children or child living at his death who should attain the age of twenty-one years, and if more than one in equal shares :

Recital of  
number of  
children.

AND WHEREAS the said testator had two children, and no more, namely, the Reversioners, both of whom have attained the age of twenty-one years :

Agreement  
for sale.

AND WHEREAS the said E. F. and the Reversioners have agreed to sell the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances to the said C. D. at the price of £——, notwithstanding that he is a trustee for sale thereof (*c*), the said E. F. and the Reversioners being satisfied from their own knowledge and from independent inquiries and valuations made by them or at their direction that the said purchase-money is the full market value of the said hereditaments :

---

(*c*) Though a trustee for sale cannot purchase from himself, there is no rule which precludes him from purchasing from his beneficiaries, but before he can do so the fiduciary relation must be actually or impliedly determined : Lewin on Trusts, 11th ed., 565 *et seq.* ; Dart, 7th ed., 50.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— Conveyance and release.  
now paid by the said C. D. to the Vendors as such trustees as aforesaid (the receipt of which sum the Vendors hereby acknowledge), the Vendors, As Trustees, and by the direction of the said E. F. and the Reversioners, hereby convey, and the said E. F., As Beneficial Owner, hereby assigns and surrenders, and each of the Reversioners as to his share in the proceeds of sale of the said hereditaments hereby As Beneficial Owner assigns and releases unto the said X. (*f*),

ALL THOSE, &c. (*Forms in Sect. II., sup.*),

To HOLD unto the said X. in fee simple.

To THE USE of the said C. D. in fee simple, discharged from all the trusts, powers, and provisions of the recited Will.

(*Add provision restricting the implied covenants for title by E. F., Form No. 1, Sect. III.; also, if required, acknowledgment and undertaking, Form No. 6, Sect. III., and Form No. 11, Sect. III., sup.*)

IN WITNESS, &c.

GROUP E.—CONVEYANCES ON SALES UNDER THE SETTLED LAND ACTS OR UNDER A POWER OF SALE OR A GENERAL POWER OF APPOINTMENT.

No. I.

CONVEYANCE of FREEHOLDS by a TENANT for LIFE or LIMITED OWNER under a WILL where the PURCHASE-MONEY is paid to TRUSTEES for the purposes of the SETTLED LAND ACTS. VARIATIONS where the TESTATOR died after 1897, or where the MONEY is paid into COURT.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*tenant for life*, hereinafter called the Vendor), of the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part:

(*f*) As one of the trustees is conveying to himself, the usual practice of inserting a grantee to uses is here followed.

As the trust for sale cannot properly be executed, it will be desirable to commute the death duties, which cannot be overreached. Parties. Death duties.

Recitals.

WHEREAS (g) John L., deceased, being at his death seised of the hereditaments hereinafter described for an estate in fee simple in possession free from incumbrances, duly made his Will dated the — day of —, and thereby, after appointing P. and Q. to be the executors of his Will and trustees thereof for all the purposes of the Settled Land Acts, 1882 to 1890 (h),

Will.

(g) See also Form No. 13, Sect. I., *sup.* For a recital of a settlement, see Forms 10 and 11, Sect. I., *sup.*

Effect of conveyance under S. L. Acts.

(h) The conveyance on sale, or mortgage, &c., by a tenant for life or person having the powers of a tenant for life under the S. L. Acts operates (see S. L. Act, s. 20) like a bargain and sale at common law, and passes the common law estate (if subject to the settlement) in the case of freeholds and leaseholds, and the right to admittance without surrender (sub-s. 3) in the case of copyholds, whether the tenant for life has a legal or an equitable estate; and on the estate so passed, in the case of freeholds, uses may be declared. The conveyance divests any legal estate in freeholds, leaseholds, or copyholds vested in trustees under the settlement, hence they are not necessary parties to the conveyance, except for the purpose of receiving the purchase price or sum advanced. If, however, the legal estate were outstanding, *e.g.* (in the case of freeholds) in the personal representatives, who have not assented to the devise contained in, or conveyed the land to the uses of, the will of a testator who died after 1897 (L. T. Act, 1897, ss. 1, 2, 3, 25), or in a mortgagee who has been paid off, but has not reconveyed, the concurrence of the personal representatives, or of the mortgagee, would be necessary in order to pass the legal estate to the purchaser.

Points to be attended to by a Purchaser or Mortgagee when the transaction is carried out under the S. L. Acts.

On a conveyance to a purchaser or mortgagee under the S. L. Acts the following are some of the principal points to be attended to:—

(1) That the purchase or mortgage money be paid to the trustees or into Court: S. L. Act, 1882, s. 22.

(2) Whether capital money is paid to trustees or into Court (if into Court there must be Settled Land Act trustees of the settlement: *Hatten v. Russell* (1888), 38 Ch. D. 334, 335; 57 L. J. Ch. 425; *Re Fisher and Grazebrook*, 1898, 2 Ch. 660; 67 L. J., Ch. 613; except where the sale is on behalf of an infant under S. L. Act, 1882, s. 60, in which case such trustees are not necessary: *Re Dudley* (1887), 35 Ch. D. 338; 56 L. J. Ch. 478); then as regards settlements before 1883 which do not confer a power of sale on a sole trustee (in which case one trustee is sufficient: *Re Garnett-Orme and Hargreaves* (1883), 25 Ch. D. 595; 53 L. J. Ch. 196; T. Act, 1893, s. 20), and also as regards settlements after 1882 which do not provide to the contrary, see that there are at least two trustees for the purposes of the Acts: S. L. Act, 1882, s. 39; see also ss. 2 (8) and 38 and S. L. Act, 1890, s. 16. A tenant for life of settled land which is subject to a future trust for sale can be a trustee within S. L. Act, 1890, s. 16: *Re Davies and Kent*, 1910, 2 Ch. 35; and as to the meaning of "other land" in s. 16, see *Re Moore*, 1906, 1 Ch. 789; 75 L. J. Ch. 342. As to compound settlements, see Wolst. Conv. Acts, 9th ed., 325 *et seq.* The trustees need not have been appointed more

As to S. L. Act trustees.

devised his real estate (including the hereditaments hereinafter described), To THE USE of the Vendor during his life, with remainders over, And the said Will contained no power to appoint new trustees thereof :

AND WHEREAS the said testator died on the — day of —, without having revoked or altered his said Will, which was on the — day of — duly proved in the Principal [— District] Probate Registry by the said P. alone :

Death and probate.

[AND WHEREAS by an Indenture dated the — day of —, and made between the said P. and Q. of the one part, and R. (*grantee to uses*) of the other part, after recitals whereby it appeared that the usual notices to creditors had been given, and that the time named in such notices had expired and that all claims of which the said P. and Q. then had notice had been paid or satisfied, the said real estate devised by the Will of the said John L. was conveyed by the said P. and Q. (*i*)

[Conveyance by executors to the uses of the Will, where the testator died after 1897.]

than one month before the conveyance, so as to be capable of having had due notice under S. L. Act, 1882, s. 45, for notice may have been waived under S. L. Act, 1884, s. 5. A purchaser acting in good faith is not concerned to inquire whether notice has been given: *Duke of Marlborough v. Sartoris* (1886), 32 Ch. D. at p. 623; 56 L. J. Ch. 70; see also as to notices generally, *Wolst. Conv. Acts*, 9th ed., 400 *et seq.*

(3) In the case of a purchase see that the property is not a mansion house, park, &c., within s. 10 of S. L. Act, 1890, or, if within that section, then that the necessary consent or order has been obtained. The consent or order should be recited in the conveyance. The consent need not be in writing: *Gilbey v. Rush*, 1906, 1 Ch. 11; 75 L. J. Ch. 32; there may be more than one principal mansion house in the same settlement: *ib.*, and see *Re Wythes*, 1908, 1 Ch. 593; 77 L. J. Ch. 319. A “park” includes a private park: *Pease v. Courtney*, 1904, 2 Ch. 503; 73 L. J. Ch. 760.

Mansion house and park.

(4) Whatever be the terms of a power of sale, the tenant for life, or all the persons if more than one constituting the tenant for life (S. L. Act, 1882, s. 2 (6)), should convey; but where trustees are exercising a power in the settlement not requiring consent, the concurrence of one tenant for life in the conveyance to consent is sufficient (S. L. Act, 1882, s. 56 (2); S. L. Act, 1884, s. 6 (2)), unless their shares are separately settled: *Re Osborne and Bright's, Ltd.*, 1902, 1 Ch. 335; 71 L. J. Ch. 285. Where land is subject to an immediate trust for sale the trustees are the persons to convey with the consent of the person, if any, whose consent is made requisite by the trust. The tenant for life of the proceeds of sale is not a necessary party unless an order has been obtained under S. L. Act, 1884, s. 7. See *Wolst. Conv. Acts*, 9th ed., 439, for cases where orders have been made under s. 7; *Re Childs*, 1907, 2 Ch. 348; 76 L. J. Ch. 565; *Re Wagstaff*, 1909, 2 Ch. 201; 78 L. J. Ch. 513.

Concurrence of tenant for life.

(i) If the testator died after 1897 the freeholds will be vested in his

Land Transfer Act.

(subject to a charge for the payment of any sum of money which the personal representatives were liable to pay (*k*), to the uses, upon the trusts, and subject to the powers and provisions declared by the said Will concerning the same:]

Death of trustees.

AND WHEREAS the said P. died on the — day of —, and the said Q. died on the — day of —, having by his Will dated the — day of — appointed Robert G. executor thereof, who duly proved the same in the Principal Probate Registry, on the — day of — :

Appointment of new Trustees under T. Act.

AND WHEREAS by an Indenture dated the — day of —, and made between the said Robert G. of the one part, and the Trustees of the other part, the said Robert G., in exercise of the power for that purpose conferred on him by the Trustee Act, 1893 (*l*), appointed the Trustees to be Trustees of the recited Will of the said John L. for all the purposes of the Settled Land Acts aforesaid :

Agreement for sale.

AND WHEREAS the Vendor, as tenant for life in possession [*or as a person having the statutory powers of a tenant for life*] under the recited Will, has agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £ — (*m*) :

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personal representatives (L. T. Act, 1897, Part I.), and they can either assent to the devise or convey the land to the uses declared by the Will. In practice the latter course is followed where the land is settled by the Will. As the executors derive title from the Will, and not from probate, all who do not disclaim must join in the conveyance: *Re Pawley and London, &c. Bank*, 1900, 1 Ch. 58; 69 L. J. Ch. 6. It is conceived, however, that it is never necessary for an executor who has renounced probate to join, see S. C. at p. 64; and as to the effect of renunciation: 20 & 21 Vict. c. 77, s. 79. General executors can sell without the concurrence of special executors of foreign property: *Re Cohen and London County Council*, 1902, 1 Ch. 187; 71 L. J. Ch. 164. As to the jurisdiction of the Court in such cases, see *Re Walbeck* (1904), W. N. 204.

(*k*) See L. T. Act, 1897, s. 3 (1). When the personal representatives have given the usual notices to creditors, such a charge does not entitle a purchaser from the devisee to any indemnity, see *Re Cary and Lott*, 1901, 2 Ch. 463; 70 L. J. Ch. 653. The purchaser will take free from the charge as regards any debts of which the executors had no notice: S. C.

(*l*) See s. 47.

Payment of purchase-

(*m*) If the purchase-money, which is unusual, is to be paid into Court

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £—— by the direction of the Vendor now [on or before the execution of these presents (*n*)] paid by the Purchaser to the Trustees (*o*) as such trustees as aforesaid (the receipt of which sum the Trustees hereby acknowledge) the Vendor, in exercise of the power for this purpose conferred on him by the Settled Land Acts, 1882 to 1890 (*p*), and of all other powers and As Beneficial Owner (*q*) hereby conveys unto the Purchaser

Conveyance  
by tenant  
for life.

ALL THOSE, &c. (*see Forms in Sect. II., sup.*).

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple, discharged from all the limitations, trusts, powers, and provisions

Habendum.

(see S. L. Act, 1882, s. 22 (1)), the following recital should be added after the recital of the agreement for sale:—

money into  
Court.

AND WHEREAS the Vendor desired that the said sum of £—— should be paid into Court and accordingly the Purchaser has, pursuant to an Order of the Chancery Division of the High Court of Justice made on the —— day of —— by the Honourable Mr. Justice —— in Chambers, paid the said sum of £—— into Court to the credit of “In the matter of the Will dated the —— day of —— of John L., deceased, proceeds of sale of certain freehold hereditaments situated at —— and In the matter of the Settled Land Act, 1882,” which payment the Vendor hereby acknowledges.

As to the necessity for the existence of S. L. Act trustees when money is paid into Court, see second note to this Precedent.

For form of summons for payment into Court, see S. L. Act Rules, 1882, App., Form No. IX.; for form of order, Seton, 6th ed., 1837.

Form of  
summons.

The sale must be made at the best price obtainable; S. L. Act, 1882, s. 4 (1). Not at a price to be fixed by arbitration, see *Re Earl of Wilton's S. E.*, 1907, 1 Ch. 50; 76 L. J. Ch. 37.

Price.

(*n*) The words in square brackets will be used where a deposit has been paid.

(*o*) If the money is paid into Court say “so paid into Court as aforesaid” after the words “sum of £——” and omit the words down to “hereby acknowledge.”

(*p*) The conveyance should be made in professed exercise of the statutory power.

(*q*) The covenants for title implied by the vendor conveying as beneficial owner should be restricted, see clause 2 of this Precedent.

of the recited Will of the said John L. and from all estates, interests, and charges subsisting or to arise thereunder (*r*).

Proviso  
restricting  
implied  
covenants  
for title.

2. PROVIDED ALWAYS, that so far as regards (*continue as in Form No. 1, Sect. III., sup.*).

Acknowledg-  
ment and  
undertaking as  
to documents.

3. THE Vendor (s) hereby acknowledges (*continue as in Form No. 6, Sect. III., sup.; add Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

(*Add Schedules of property and documents.*)

## No. II.

CONVEYANCE of FREEHOLDS by a TENANT for LIFE or LIMITED OWNER under a SETTLEMENT, where SETTLED LAND ACT TRUSTEES have been appointed by the COURT.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*tenant for life*) (hereinafter called the Vendor), of the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part.

Recital of  
Settlement.

WHEREAS under an Indenture of Settlement dated the — day of —, and made between the Vendor of the 1st part, Jane E., spinster (afterwards and hereinafter called Jane B.), of the 2nd part, and X. and Y. of the 3rd part (being a Settlement made in consideration of the marriage solemnised on the — day of — between the Vendor and the said Jane B.), the hereditaments hereinafter described (with other hereditaments) now stand limited free from incumbrances to uses under which the Vendor is tenant for life in possession and the Trustees, as appears from the Schedule hereto, are the present Trustees

(*r*) See S. L. Act, 1882, s. 20, and Wolst. Conv. Acts, 9th ed., 362.

Custody of  
title deeds.

(*s*) If the tenant for life has the legal estate he will of course have the deeds and be the proper person to give the acknowledgment and undertaking. If his estate is equitable he may be given the custody of the deeds on terms and accordingly give the acknowledgment and undertaking: *Re Burnaby's S. E.* (1889), 42 Ch. D. 621; 58 L. J. Ch. 664; *Re Wythes*, 1893, 2 Ch. 369; 62 L. J. Ch. 663; *Re Balloe*, 1893, 1 Ch. 547; 62 L. J. Ch. 233; *Re Newen*, 1894, 2 Ch. 297; 63 L. J. Ch. 763; and see Wolst. Conv. Acts, 9th ed., 363. Where solicitors holding the deeds are acting for the tenant for life and the trustees, they would be deemed to hold them for the tenant for life for the purposes of the sale.

thereof, but [no persons were thereby appointed to be trustees (*t*) for the purposes of the Settled Land Acts, 1882 to 1890, and (*u*)] no power of sale was thereby conferred upon the Trustees thereof:

AND WHEREAS by an Order (*x*) of the Chancery Division of the High Court of Justice made on the — day of — by the Honourable Mr. Justice —, In the matter of the — Estate, situated at —, in the County of —, settled by the recited Settlement, And in the matter of the Settled Land Acts, 1882 to 1890, B. No. —, the Trustees were appointed to be trustees of the recited Settlement for all the purposes of the said Acts:

Recital of Order.

AND WHEREAS (*Form No. 14, Sect. I., sup.*).

Agreement for sale. Operative part, &c.

*Continue as in last Precedent.*

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO (*Form No. 12, Sect. I., sup.*).

Schedule of appointments of new Trustees.

### No. III.

CONVEYANCE of FREEHOLDS by a TENANT for LIFE, where SETTLED LAND ACT TRUSTEES of a COMPOUND SETTLEMENT have been appointed by the COURT.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*tenant for life*) (hereinafter called the Vendor), of the first part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part:

Parties.

WHEREAS under an Indenture of Settlement (hereinafter called the First Settlement) dated the — day of —, and made between E. F. (since deceased), of the 1st part, Jane R., spinster (afterwards and hereafter called Jane F.), of the 2nd part, and G. H. (since deceased) and J. K. of the 3rd part (being a Settlement made in consideration of the marriage solemnised on the — day of — between the said E. F. and Jane F.), the

Recital of the First Settlement.

(*t*) As to who are trustees for the purposes of the Acts, see S. L. Act, 1882, s. 2 (8); S. L. Act, 1890, s. 16; and notes to those sections in Wolst. Conv. Acts, 9th ed.

(*u*) The words in square brackets will only be used where the settlement was after 1882.

(*x*) See S. L. Act, 1882, s. 38. For form of summons, see S. L. Act Rules, 1882, App., Form XIX.; for forms of orders, Seton, 6th ed., 1825, 1826, and 1828.

hereditaments hereinafter described (with other hereditaments) immediately before the execution of the Disentailing Assurance hereinafter recited stood limited free from incumbrances to uses under which the said E. F. was tenant for life in possession and the Vendor was (subject to a yearly jointure rent-charge of £500 limited by the First Settlement to the said Jane F. during the residue of her life if (as happened) she should survive the said E. F. (y)) tenant in tail male in remainder, And by the First Settlement the said G. H. and J. K. were appointed trustees thereof with a power to sell all or any of the hereditaments thereby settled, And power was conferred on the said E. F. during his life to appoint a new trustee or new trustees thereof :

Death of a trustee.

Recital of an appointment of new Trustees.

AND WHEREAS the said G. H. died on the — day of — :

AND WHEREAS by an Indenture of Appointment dated the — day of —, and made between the said E. F. of the 1st part, the said J. K. of the 2nd part, and the Trustees of the 3rd part, the said E. F., in exercise of the power for that purpose conferred on him by the First Settlement, appointed the Trustees to be trustees of that Settlement in the place of the said G. H. (deceased) and the said J. K., who thereby retired from the trust (z) :

Recital of the Disentailing Assurance.

AND WHEREAS by an Indenture dated the — day of —, and made between the said E. F. of the 1st part, the Vendor of the 2nd part, and the Trustees (a) of the 3rd part (duly enrolled and perfected as and being the Disentailing Assurance hereinbefore referred to), the Vendor, with the consent of the said E. F. as protector of the settlement, conveyed, and the said E. F. conveyed and released, the hereditaments comprised in the First Settlement and then remaining unsold (including the hereditaments herein-after described) unto the Trustees in fee simple, subject to the said jointure rent-charge limited in favour of Jane F. by the First

(y) The subsistence of this jointure in the above Precedent necessitates the appointment of trustees of the compound settlement to enable the tenant for life under the subsequent settlement to override it. If he had become tenant in tail in possession under the first settlement the application to the Court would have been unnecessary : S. L. Act, 1882, s. 58.

(z) In this case the legal estate is in the tenant for life and remaindermen ; hence no vesting declaration or other conveyance to the new trustees is required unless there is a name and arms clause, or a term is vested in the trustees for raising family charges.

(a) The trustees are here only grantees to uses.

Settlement, but freed from the life estate of the said E. F. under that Settlement and all powers annexed to or exercisable during the continuance of such life estate, and also freed from the estate in tail male of the Vendor and all other estates in tail male or in tail of the Vendor or the said E. F., and all estates, rights, interests, and powers to take effect after the determination or in defeasance of such estates in tail male or in tail or any of them, and so subject and discharged, To such Uses, Upon such Trusts, and in such manner generally as the said E. F. and the Vendor should from time to time or at any time by deed revocable or irrevocable jointly appoint, And in default of such appointment, To the Uses therein mentioned.

AND WHEREAS by an Indenture of Resettlement (hereinafter called the Second Settlement) dated the — day of —, and made between the said E. F. of the 1st part, the Vendor of the 2nd part, Mary S. (spinster), of the 3rd part, and the Trustees of the 4th part (being a Settlement made in consideration of the marriage solemnised on the — day of — between the Vendor and the said Mary S.), the said E. F. and the Vendor, in exercise of the power (b) for that purpose conferred on them by the recited Disentailing Assurance, appointed that the hereditaments comprised in the First Settlement and then remaining unsold (including the hereditaments hereinafter described) should, subject to the said jointure rent-charge of £500 limited by the First Settlement, remain and be (after the solemnisation of the then intended marriage), To the Use of the said E. F. during his life, and so as to restore his statutory and other powers under the First Settlement (c) and the power of sale conferred on the Trustees thereof, with remainder To the Use of

Recital of the  
Resettlement.

(b) In resettling it is generally desirable to relimit the existing jointures and portion terms; this will facilitate the release of the original jointures and portions. If the original jointress will release the original jointure and accept a new one, this is desirable.

Relimitation of  
family charges.

(c) It is no longer desirable to restore the life estate, see *Re Cornwallis-West and Munro*, 1903, 2 Ch. 150; 72 L. J. Ch. 499; *Re Lord Wimborne and Browne*, 1904, 1 Ch. 537; 73 L. J. Ch. 270; but where necessary the powers can be restored. In *Re Cornwallis-West and Munro*, *sup.*, no settlement was created by the instrument restoring the life estate and giving the remainderman the fee simple, for the tenant for life was in of his old estate; hence no S. L. Act trustees could be appointed of that instrument alone.

Restoration of  
life estate or  
powers.

the Vendor during his life, with divers remainders over, And the Trustees were appointed to be the trustees of the Second Settlement for all the purposes of the Settled Land Acts, 1882 to 1890:

Death of first  
tenant for life.  
Recital of  
Order appoint-  
ing S. L. Act  
Trustees of the  
compound  
settlement

AND WHEREAS the said E. F. died on the — day of —.

AND WHEREAS by an Order (*d*) of the Chancery Division of the High Court of Justice made on the — day of — by the Honourable Mr. Justice —, In the matter of the First Settlement, the recited Disentailing Assurance, and the Second Settlement, And in the matter of the Settled Land Acts, 1882 to 1890, the Trustees were appointed to be trustees of the Settlement created by the said three instruments for the purposes of the said Acts:

Agreement  
for sale.

AND WHEREAS the Vendor, as such tenant for life in possession as aforesaid, has agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £ —:

NOW THIS INDENTURE WITNESSETH as follows:—

Conveyance  
by tenant  
for life.

1. IN pursuance of the said agreement and in consideration of the sum of £ — now paid by the Purchaser by the direction of the Vendor to the Trustees as such trustees as aforesaid (the receipt of which sum the Trustees hereby acknowledge), the Vendor, in exercise of the power for this purpose conferred on him by the Settled Land Acts, 1882 to 1890, and of all other powers and As Beneficial Owner, hereby conveys unto the Purchaser

Compound  
settlements.

(*d*) The order will be made under s. 38 of the S. L. Act, 1882. It is not necessary, though generally desirable, that the trustees appointed of the compound settlement should be the existing trustees of either settlement. As to who the Court will or will not appoint, see Wolst. Conv. Acts, 9th ed., p. 396. For a full discussion as to when it is necessary to have trustees of the compound settlement appointed by the Court, see Wolst. Conv. Acts, 9th ed., 325 *et seq.*; also *Re Marshall's Settlement*, 1905, 2 Ch. 325; 74 L. J. Ch. 588. The statement at p. 327 of Wolst. Conv. Acts on the authority of *Re Spencer's S. E.*, 1903, 1 Ch. 75; 72 L. J. Ch. 59, that "a declaration in a settlement that the trustees thereof should be trustees of the compound settlement made by that settlement and any *prior* instruments is ineffectual" is qualified by *Re Spearman's S. E.*, 1906, 2 Ch. 502; 75 L. J. Ch. 729, deciding that the tenant for life and tenant in tail of estates unfettered by any charges or powers of charging could, in resettling the estates, appoint trustees of the compound settlement constituted by the original settlement and resettlement; but in this case it is undesirable and unnecessary to create a compound settlement.

ALL THOSE, &c. (*see Forms in Sect. II., sup.*),

TO HOLD UNTO and TO THE USE of the Purchaser in fee simple, discharged from all the limitations, trusts, powers, and provisions of the First Settlement, the recited Disentailing Assurance, and the Second Settlement, and from all estates, interests, and charges subsisting or to arise thereunder.

2. PROVIDED ALWAYS, that so far as regards (*continue as in Form No. 1, Sect. III., sup.*).

3. THE Vendor hereby acknowledges the right of the Purchaser to production of the First Settlement, the recited Disentailing Assurance, and the Second Settlement, and to delivery of copies thereof, And hereby undertakes for the safe custody thereof.

Acknowledgment and undertaking as to documents.

IN WITNESS, &c.

#### No. IV.

#### CONVEYANCE of COPYHOLDS by a TENANT for LIFE under the SETTLED LAND ACTS.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*tenant for life (c)*) (hereinafter called the Vendor), of the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part :

Parties.

WHEREAS by an Indenture of Settlement dated the — day of —, and made between the Vendor of the 1st part. Jane L., spinster, of the 2nd part, and the Trustees of the 3rd part (*continue as in Form No. 24, Sect. I., sup.*) :

Recital of settlement of copyholds where settled by reference to the uses of freeholds, admittance of Trustees, and agreement for sale.

(c) This conveyance passes the right to admission, and no surrender is necessary. It is sufficient that the deed be entered on the court rolls of the manor: S. L. Act, 1882, s. 20 (3). The purchaser must be admitted on payment of the customary fines. For a form of admittance, see next Precedent.

Effect of conveyance of copyholds under S. L. Acts.

Where a testator has devised his copyholds to his trustees upon trust to pay the rents to his widow, who is selling the property under the S. L. Acts, the lord of the manor is only entitled to a fine on the admission of the purchaser, and not to the fine which would have been payable if the trustees had been admitted: *Re Naylor and Spindler* (1886), 34 Ch. D. 217; 56 L. J. Ch. 453; and see Wolst. Conv. Acts, 9th ed., 363.

Fines payable on sale by equitable tenant for life before admission of trustees.

Customary freeholds are generally conveyed in the same way as freeholds, but in some cases the purchaser has also to be admitted.

Customary freeholds.

NOW THIS INDENTURE WITNESSETH as follows:—

Statutory conveyance of copyholds.

1. IN pursuance of the said agreement and in consideration of the sum of £—— by the direction of the Vendor now paid by the Purchaser to the Trustees as such trustees as aforesaid (the receipt of which sum the Trustees hereby acknowledge), the Vendor, in exercise of the power for this purpose conferred on him by the Settled Land Acts, 1882 to 1890, and of all other powers, and As Beneficial Owner, hereby conveys unto the Purchaser

Habendum.

ALL THOSE, &c. (*parcels, Form No. 17, Sect. II., sup.*),

TO HOLD unto and TO THE USE of the Purchaser, his heirs and assigns, at the will of the lord, according to the custom of the said Manor of ——, at and under the rents, fines, heriots, suits and services therefor due and of right accustomed, But discharged from all the limitations, trusts, powers and provisions of the recited Settlement and from all estates, interests and charges subsisting or to arise thereunder.

Proviso restricting implied covenants for title. Acknowledgment and undertaking as to documents.

2. PROVIDED ALWAYS, that so far as regards (*continue as in Form No. 1, Sect. III., sup.*).

3. THE Vendor hereby acknowledges (*continue as in Form No. 6, Sect. III., sup. Add Form No. 11, Sect. III., if required.*)

IN WITNESS, &c. (*Add Schedules.*)

No. V.

ADMITTANCE out of Court of PURCHASER on CONVEYANCE of COPYHOLDS by TENANT for LIFE, the MONEY being PAID to TRUSTEES.

THE MANOR of —— }  
In the County of —— }

Recitals. Settlement.

[*Recite Settlement as in Form No. 24, Sect. I., sup., inserting the names of the parties in place of the definitions, and saying, according to the custom of this Manor the copyhold hereditaments therein mentioned and hereinafter described (f) :*]

Surrender to Trustees.

AND WHEREAS on the —— day of —— the said A. B. came before the steward of this Manor, and in pursuance of the covenant contained in the recited Settlement did out of Court surrender

(f) An extract from this settlement in the form of this recital should be first entered on the rolls, see S. L. Act, 1882, s. 20 (3).

into the hands of the lord of this Manor, by the hands and acceptance of the then steward, by the rod, according to the custom of this Manor, ALL, &c. (to which same premises the said A. B. was admitted on the — day of —), To THE USE of the said M. and N., their heirs and assigns, according to the custom of this Manor.

AND WHEREAS on the — day of — the said M. and N. Admittance.  
were admitted to the said copyhold hereditaments hereinafter described, To HOLD to the said M. and N. and their heirs according to the custom of this Manor :

AND WHEREAS by an Indenture of Conveyance (g) dated the — day of —, and made between the said A. B. of the Statutory conveyance of copyholds.  
1st part, the said M. and N. of the 2nd part, and C. D., of, &c., of the 3rd part, in consideration of the sum of £— paid by the said C. D. to the said M. and N., as trustees of the recited Settlement, the said A. B., as tenant for life in possession under the said Settlement, and in exercise of the power conferred on him by the Settled Land Acts, 1882 to 1890, and of every other power enabling him, conveyed ALL, &c., (*set out parcels as in the Conveyance*).

To HOLD unto and To THE USE of the said C. D., his heirs and assigns, according to the custom of this Manor, and at and under the rents, fines, heriots, suits and services therefor due and of right accustomed :

NOW BE IT REMEMBERED (h), that on the — day of — the Admittance.  
said C. D. came before X. Y., steward of this Manor, out of Court, that is to say, at his dwelling-house, situated in, &c., and prayed to be admitted to all the customary or copyhold hereditaments lying within and pareel of this Manor so conveyed to him, the said C. D., by the recited Conveyance (and to which the said M. and N. were admitted as aforesaid on the — day of —), To which the lord of the said Manor, by the same steward, granted to the said C. D. seisin thereof by the rod,

To HOLD unto the said C. D. and his heirs, to be holden of the lord by copy of court roll at the will of the lord, according to the

(g) See last Precedent. This deed should be also first entered on the court rolls, see S. L. Act, 1882, s. 20 (3).

(h) The form of the admission may vary according to the custom of the manor.

custom of this Manor, by fealty, suit of court, the ancient annual rents, heriots and fines when they shall happen, and other the duties and services therefor due and of right accustomed, and so (saving the rights of the lord) the said C. D. is by the said steward admitted tenant thereof, and pays to the lord on such his admittance a fine [certain] of £——, and his fealty is respited.

No. VI.

ASSIGNMENT of LEASEHOLDS by a TENANT for LIFE under the SETTLED LAND ACTS, where the SETTLEMENT was made by DEED. VARIATIONS where the SETTLEMENT was made by WILL.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*tenant for life*) (hereinafter called the Vendor), of the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part :

Recital of Lease.  
Settlement of or Will bequeathing leaseholds by reference to uses of freeholds.  
Agreement for sale.

WHEREAS by an Indenture of Lease (*Form No. 28, Sect. I., sup.*) :  
AND WHEREAS (*Form No. 30, Sect. I., sup., where the necessary variations will be found, and add, in the case of a Will, recitals of the death of the testator without having revoked or altered his Will, probate, and the assent by the Executors*) :  
AND WHEREAS the Vendor, as tenant for life in possession under the recited Settlement [Will], has agreed to sell to the Purchaser free from incumbrances the premises demised by the recited Lease for the residue of the term thereby granted at the price of £—— :

NOW THIS INDENTURE WITNESSETH as follows :—

Conveyance by tenant for life.

1. In pursuance of the said agreement and in consideration of the sum of £—— by the direction of the Vendor now paid by the Purchaser to the Trustees as such trustees as aforesaid (the receipt of which sum the Trustees hereby acknowledge), the Vendor, in exercise of the power for this purpose conferred on him by the Settled Land Acts, 1882 to 1890, and of all other powers, and As Beneficial Owner, hereby assigns unto the Purchaser

Parcels.

ALL the premises comprised in and demised by the recited Lease,

To HOLD unto the Purchaser for the residue of the term granted by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the said Lease reserved and contained and henceforth on the part of the lessee to be paid, observed, and performed, But discharged from all the limitations, trusts, powers and provisions of the recited Settlement [Will of the said —, deceased] and from all estates, interests and charges subsisting or to arise thereunder. Habendum.

2. PROVIDED ALWAYS, that so far as regards (*continue as in Form No. 1, Sect. III., sup.*). Proviso restricting implied covenants for title.

3. THE Purchaser hereby covenants with the Vendor (*i*) (*Form No. 5, Sect. III., sup.*). Covenant by Purchaser to pay rent, &c.

4. THE Vendor hereby acknowledges (*continue as in Form No. 6, Sect. III., sup., if required; also Form No. 11, Sect. III., if required*). Acknowledgment and undertaking as to documents.

IN WITNESS, &c.

## No. VII.

### CONVEYANCE of FREEHOLDS, COPYHOLDS, and LEASEHOLDS by a TENANT for LIFE under a SETTLEMENT, where the purchase-money is paid to TRUSTEES appointed by the SETTLOR for the purposes of the SETTLED LAND ACTS.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*tenant for life*) (hereinafter called the Vendor) of the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part : Parties.

WHEREAS by an Indenture of Lease (*Recite Lease to Vendor as in Form No. 28, Sect. I., sup.*) : Recital of Lease.

AND WHEREAS by an Indenture of Settlement (*continue as in Form No. 24, Sect. I., sup., saying "the freehold hereditaments hereinafter described (with other hereditaments)" in place of* Recital of settlement of the freeholds, copyholds, and leaseholds.

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(*i*) The settlement would not contain any covenant by the trustees to pay rent, &c. ; hence they cease to be liable in regard to future breaches under the lease on the assignment to the purchaser. The tenant for life will, if he acquired and settled the lease, remain liable under the covenants in the lease, and as vendor would then be entitled to a covenant from the purchaser. Covenant to pay rent on assignment under S. L. Acts.

“the freehold hereditaments therein mentioned,” and add, “And by the said Indenture the premises comprised in the recited Lease were (with other leasehold hereditaments) assigned to the Trustees for the residues of the respective terms therein, Upon trust out of the rents and profits thereof to pay the rents and perform the lessee’s covenants in the said respective Leases reserved and contained, and subject thereto Upon trusts and subject to powers and provisions as nearly corresponding with the uses declared concerning the freehold hereditaments thereby settled as the different tenure would permit, but subject to a restriction against the absolute vesting of leaseholds for years in any infant tenant in tail [male] by purchase as therein mentioned:

Admission of  
Trustees.

AND WHEREAS (*Recite surrender to and admission of Trustees as in Form No. 24, Sect. I., sup.*):

Agreement  
for sale.

AND WHEREAS the Vendor as tenant for life in possession under the recited Settlement has agreed to sell to the Purchaser free from incumbrances the freehold and copyhold hereditaments hereinafter described and the premises comprised in the recited Lease for the residue of the term thereby granted at the price of £—— (*k*):

NOW THIS INDENTURE WITNESSETH as follows:—

Conveyance of  
freeholds and  
copyholds.

1. IN pursuance of the said Agreement and in consideration of the sum of £—— now paid by the Purchaser by the direction of the Vendor to the Trustees as such trustees as aforesaid (the receipt of which sum the Trustees hereby acknowledge), the Vendor, in exercise of the power conferred on him for this purpose by the Settled Land Acts, 1882 to 1890, and of all other powers, and As Beneficial Owner, hereby conveys unto the Purchaser—

Parcels.

FIRST, ALL THOSE freehold hereditaments, &c. (*see Forms in Sect. II., sup.*),

AND SECONDLY, ALL THOSE copyhold hereditaments, &c. (*Form No. 17, Sect. II., sup.*),

(*k*) As no separate surrender of the copyholds is necessary (see S. L. Act, 1882, s. 20 (3)), no apportionment of the purchase-money for the purposes of the Stamp Act, 1891, is required. This deed must be entered on the rolls. This is an exception to the rule that copyholds must be dealt with by a customary assurance. For a form of Admittance, see *Proc. V.*, p. 402, *sup.*, of this Group.

To HOLD, as to the said freehold hereditaments, unto and To THE USE of the Purchaser in fee simple, and as to the said copyhold hereditaments, unto and To THE USE of the Purchaser, his heirs and assigns, according to the custom of the said Manor (*l*) of — at and under the rents, fines, heriots, suits and services therefor due and of right accustomed, And as to all the said freehold and copyhold hereditaments, discharged from all the limitations, trusts, powers and provisions of the recited Settlement, and from all estates, interests and charges subsisting or to arise thereunder.

Habendum.

2. FOR the consideration aforesaid the Vendor, in exercise of the power for this purpose conferred on him by the Settled Land Acts, 1882 to 1890, and of all other powers, and As Beneficial Owner, hereby assigns unto the Purchaser

Assignment of leaseholds.

ALL the premises comprised in and demised by the recited Lease,

Parcels.

To HOLD unto the Purchaser for the residue of the term granted by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the said Lease reserved and contained, and henceforth on the part of the lessee to be paid, observed, and performed, But discharged from all the limitations, trusts, powers and provisions of the recited Settlement and from all estates, interests and charges subsisting or to arise thereunder.

Habendum.

3. PROVIDED ALWAYS, that so far as regards (*continue as in Form No. 1, Sect. III., sup.*).

Proviso restricting implied covenants for title.

4. THE Purchaser hereby covenants with the Vendor (*Form No. 5, Sect. III., sup.*).

Covenant by Purchaser to pay rent, &c.

5. THE Vendor hereby acknowledges (*continue as in Form No. 6, Sect. III., sup., if required.*).

Acknowledgment and undertaking as to documents.

IN WITNESS, &c. (*Add Schedules of freeholds, copyholds, and documents if required.*)

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(*l*) The manor will be referred to in the recital of the Settlement.

## No. VIII.

CONVEYANCE *of* FREEHOLDS *by* a TENANT *for* LIFE *under*  
*the* SETTLED LAND ACTS, *where* a MORTGAGEE *in* fee  
 CONCURS. VARIATIONS *where* the MORTGAGE DEBT *is*  
 CHARGED *on* the PROCEEDS *of* SALE (*m*).

Parties.

THIS INDENTURE, made the — day of — BETWEEN G. H., of, &c. (hereinafter called the Mortgagee), of the 1st part, A. B., of, &c. (*tenant for life*) (hereinafter called the Vendor), of the 2nd part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 3rd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 4th part :

Recital of Mortgage.

WHEREAS by an Indenture of Mortgage dated the — day of —, and made between F. B. of the one part and the Mortgagee of the other part, the said F. B., being then seised in fee simple in possession free from incumbrances, conveyed the hereditaments hereinafter described to the Mortgagee in fee simple subject to redemption by the said F. B. or the persons deriving title under him on payment to the Mortgagee of the principal sum of £—, with interest thereon as therein mentioned :

Recital of Will.

AND WHEREAS the said F. B. duly made his Will dated the — day of — and thereby, after appointing the Trustees to be the executors and trustees thereof for all the purposes of the Settled Land Acts, 1882 to 1890, devised the hereditaments hereinafter described (subject to the recited Mortgage and the principal money and interest thereby secured), To the USE of his son, the Vendor, during his life, with divers remainders over :

Recital of death of testator and probate.

AND WHEREAS the said testator died on the — day of — without having revoked or altered his said Will, which was on the — day of — duly proved at the Principal [— District] Probate Registry by the Trustees :

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(*m*) It is conceived that if a person entitled to a charge which the tenant for life could not overreach concurs in a sale and releases the land sold the charge does not attach to the purchase-money, but that the chargee can by express agreement acquire a valid lien on the purchase-money and the interim investments thereof without an actual reinvestment in land and the creation of a substituted security under S. L. Act, 1882, s. 24 (4). In such case it seems that the consent of the chargee would be necessary to any investment or other application under s. 22 (2), see Wolst. Conv. Acts, 9th ed., 343, 344.

AND WHEREAS the Vendor, as tenant for life in possession under the recited Will, has agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £—:

Agreement for sale.

AND WHEREAS the said sum of £— is still owing to the Mortgagee upon the security of the recited Mortgage, all interest thereon having been paid as he hereby acknowledges, and he has agreed upon receiving the sum so due to him to join in these presents in manner hereinafter appearing:

Agreement by Mortgagee to concur where he is paid off.

[AND WHEREAS the said sum of £—, with the current interest thereon, is still owing to the Mortgagee upon the security of the recited Mortgage, and it has been agreed that the Mortgagee shall release the hereditaments hereinafter described from his said mortgage debt, and that in consideration thereof the purchase-money and the hereditaments to be hereafter purchased therewith and the investments upon which the same shall in the meantime be invested shall be made a substituted security for the said mortgage debt (*n*):]

[Variation.

Agreement by Mortgagee to concur where the mortgage debt is left charged on the proceeds of sale.]

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of the said Agreement and in consideration of the sum of £— now paid by the Purchaser by the direction of the Vendor to the Mortgagee(*o*) (the receipt of which sum the Mortgagee hereby acknowledges), and of the sum of £— now paid by the Purchaser by the direction of the Vendor to the Trustees as such trustees as aforesaid (the receipt of which sum of £— and the payment of which sum of £—, making together the said purchase-money of £—, the Trustees hereby acknowledge), the Mortgagee, As Mortgagee, and according to his estate, hereby releases and conveys, and the Vendor, in exercise of the power for this purpose conferred on him by the Settled Land Acts, 1882 to 1890, and of all other powers and As Beneficial Owner, hereby conveys and confirms unto the Purchaser

Conveyance by Mortgagee and tenant for life.

ALL THOSE, &c. (*see Forms, Sect. II., sup.*),

Parcels.

(*n*) The mortgagee should take a separate agreement from the tenant for life for evidencing this arrangement.

(*o*) Of course, if the mortgagee is simply releasing without taking any part of the purchase-money, all reference to payment to him will be omitted.

Habendum.

TO HOLD unto and To THE USE of the Purchaser in fee simple discharged from all principal money and interest secured by and from all claims under the recited Mortgage, and from all the limitations, trusts, powers and provisions of the recited Will of the said F. B., and from all estates, interests and charges subsisting or to arise thereunder.

Proviso  
restricting  
implied  
covenants  
for title.

2. PROVIDED ALWAYS, that so far as regards (*continue as in Form No. 1, Sect. III., sup.*).

Acknowledg-  
ment and  
undertaking as  
to documents.

3. THE Vendor hereby acknowledges (*continue as in Form No. 6, Sect. III., sup., if required; also Form No. 11, Sect. III., if required*).

IN WITNESS, &c. (*Add Schedules of freeholds and documents if required.*)

## No. IX.

DEED of CONSENT by MORTGAGEES of a LIFE ESTATE in  
settled land to a SALE by the TENANT for LIFE under the  
SETTLED LAND ACTS.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the First Mortgagee), of the 1st part, C. D., of, &c. (hereinafter called the Second Mortgagee), of the 2nd part, E. F., of, &c. (hereinafter called the Third Mortgagee), of the 3rd part, and G. H., of, &c. (*tenant for life*), of the 4th part:

Recite  
Settlement.

WHEREAS by an Indenture of Settlement dated, &c., certain hereditaments in the County of — were limited to uses under which the said G. H. is tenant for life in possession:

Mortgages by  
tenant for life.

AND WHEREAS the said G. H. has executed mortgages of his life estate (*p*) in the settled hereditaments in favour of the First,

(*p*) Having regard to s. 50 of the Settled Land Act, 1882, the consent of mortgagees of the life estate of the tenant for life should be obtained to a sale. Sometimes the consent is given under a 6d. agreement stamp. It will be found more convenient, especially where there are several mortgages on a life estate, to make the mortgagees give their consent by a separate document instead of in the conveyance. Where a mortgagee of the life estate concurs in the sale the mortgage is recited and the tenant for life conveys "with the consent of the mortgagee." The mortgagee's estate passes by the exercise of the statutory power: *Re Dickinson and Kelsall*, 1908, 1 Ch. 213; 77 L. J. Ch. 177. If the mortgagee consents to the sale his concurrence in the conveyance is not necessary: *Re Davies and Kent*, 1910, 2 Ch. 35.

Second, and Third Mortgagees respectively, the short particulars of which mortgages are contained in the first Schedule hereto :

AND WHEREAS the said G. H. is desirous of selling the hereditaments mentioned in the second Schedule hereto (being part of the settled hereditaments) under the powers conferred by the Settled Land Acts, 1882 to 1890, and he has requested the First, Second, and Third Mortgagees respectively to give their consent to such sale, which they have agreed to do in manner hereinafter appearing :

That tenant for life wishes to sell under S. L. Acts.

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows :—

Witnessing part.

1. IN consideration of the premises, the First, Second, and Third Mortgagees respectively hereby consent to the said G. H. selling the hereditaments comprised in the second Schedule hereto, or any part thereof, under the powers conferred by the Settled Land Acts, 1882 to 1890.

Mortgagees' consent to tenant for life selling.

2. THE life estate or interest of the said G. H. in the money to arise from the sale of the said hereditaments, and in the land to be purchased with such money, and in the investments upon which such money shall in the meantime be invested, shall be charged with the payment of all principal money and interest secured or intended to be secured by the several Mortgages mentioned in the first Schedule hereto in like manner and with the same priorities as the life estate of the said G. H. in the hereditaments which shall be sold as aforesaid would have remained charged therewith if the same had not been sold.

Declaration that mortgages shall be transferred to life interest in sale moneys (q).

3. The First Mortgagee as to the Mortgage mentioned in the first part, the Second Mortgagee as to the Mortgage mentioned in the second part, and the Third Mortgagee as to the Mortgage mentioned in the third part of the first Schedule, hereto hereby acknowledge the right of the said G. H. to production of the respective mortgages aforesaid and to delivery of copies thereof (r).

Acknowledgment as to documents.

IN WITNESS, &c.

(q) This declaration avoids any question whether the charges on the life estate would attach to land purchased with the proceeds of the land sold : cf. S. L. Act, 1882, s. 24 (2), which mentions only uses, &c., created under powers of charging ; and sub-s. 4 of the same section is permissive only.

(r) Though a mortgagor is under s. 16 of the Conv. Act, 1881, entitled to inspect documents relating to the mortgaged property, the above acknow-

## THE FIRST SCHEDULE ABOVE REFERRED TO.

*First Part.*

Short particulars of a mortgage effected in favour of the First Mortgagee.

*Second Part.*

Short particulars of a mortgage effected in favour of the Second Mortgagee.

*Third Part.*

Short particulars of a mortgage effected in favour of the Third Mortgagee.

## THE SECOND SCHEDULE ABOVE REFERRED TO.

Short particulars of the hereditaments intended to be sold.

## No. X.

CONVEYANCE of FREEHOLDS by TRUSTEES for the purposes  
of the SETTLED LAND ACTS to the TENANT for LIFE as  
PURCHASER.

Parties. THIS INDENTURE, made, &c., BETWEEN M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the one part, and A. B., of, &c. (*tenant for life*) (hereinafter called the Purchaser), of the other part:

Recital of Settlement. WHEREAS under an Indenture of Settlement (*continue as in Form No. 10, Sect. I., substituting the word Purchaser for Vendor*):

Agreement for sale. AND WHEREAS the Trustees have agreed to sell to the Purchaser the hereditaments hereinafter described, of which the Purchaser is now tenant for life in possession as hereinbefore appearing, and the fee simple thereof in possession free from incumbrances at the price of £—:

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Trustees as such trustees as

---

ledgment should be given in order that the benefit of it may pass to the purchaser.

aforesaid (the receipt of which sum the Trustees hereby acknowledge), the Trustees, in exercise of the power for this purpose conferred on them by section twelve of the Settled Land Act, 1890 (s), and of all other powers, and As Trustees, hereby convey unto the Purchaser

Conveyance  
by S. L. Act  
trustees.

ALL, &c., (*see Forms in Sect. II., sup.*),

To HOLD unto and To THE USE of the Purchaser in fee simple, discharged from all the limitations, trusts, powers and provisions of the recited Settlement, and from all estates, interests and charges subsisting or to arise thereunder,

AND the Trustees hereby acknowledge (*t*) the right of the Purchaser to production of the recited Settlement [documents mentioned in the — Schedule hereto] and to delivery of copies thereof. (*Add Form No. 11, Sect. III., if required.*)

Acknowledg-  
ment for  
production.

IN WITNESS, &c.

[THE — SCHEDULE ABOVE REFERRED TO.

Particulars of documents retained in the custody of the Trustees.]

## No. XI.

CONVEYANCE of FREEHOLDS *by a MARRIED WOMAN TENANT for LIFE, entitled for her separate Use without power of anticipation (u).*

THIS INDENTURE, made, &c., BETWEEN Jane B., the wife of W. B., of, &c. (*tenant for life*) (hereinafter called the Vendor), of

Parties.

(s) This section gives the trustees the powers of a tenant for life where they are dealing with him in sales, exchanges, and partitions, but not in other transactions. Before the Act trustees with a power of sale with the consent of the tenant for life could sell to him: *Dixonson v. Talbot* (1870), L. R. 6 Ch. 32.

S. L. Act,  
1890, s. 12.

(t) Though the tenant for life would in the above case be entitled to the custody of the settlement and other deeds (*see Re Burnaby's S. E.* (1889), 42 Ch. D. 621; 58 L. J. Ch. 664; *Re Wythes*, 1893, 2 Ch. 369; 62 L. J. Ch. 663; *Re Behloe*, 1893, 1 Ch. 547; 62 L. J. Ch. 233; *Re Neuen*, 1894, 2 Ch. 297; 63 L. J. Ch. 763), this acknowledgment should be given here, as it will enure for the benefit of the persons deriving title under the tenant for life. Trustees who have a lien are entitled to the custody of the deeds: *Wheeler v. Tootell* (1903), 51 W. R. 693; and it is conceived that where they are acting in the place of the tenant for life the document would be deemed to be in their custody for the purposes of the transaction.

(u) A married woman may be authorised by the Court, in the case of a

the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part:—

Recital of Will made before 1883 giving life estate to a married woman.

WHEREAS John L., deceased, being at his death seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, duly made his Will dated the — day of —, and thereby devised his real estate (including the hereditaments hereinafter described)

To THE USE of his brother H. L. during his life, with remainder to uses creating estates tail for the benefit of the issue of the said H. L. as therein mentioned (which limitations have failed to take effect by reason of the death on the — day of — of the said H. L. without ever having been married), with remainder To the Use of X. Y. for the term of 100 years (*x*) from the death of the said testator if his sister, the Vendor (then Jane L., spinster) should so long live without impeachment of waste, Upon trust to pay the rents and profits of the hereditaments thereby devised to the Vendor during her life (*y*) for her separate use without power of anticipation during any coverture (*z*), And subject to the said term and the trusts thereof To the Use of the Vendor during her life without impeachment of waste, with divers remainders over, And the said Will contained a power for the Trustees to sell the hereditaments thereby settled, And the said testator thereby appointed the Trustees to be his executors:

Recital of death of testator and probate.

AND WHEREAS the said testator died on the — day of — (*a*) without having revoked or altered his said Will (except by

settlement by way of trust for sale under s. 7 of the S. L. Act, 1884, to exercise the powers of a tenant for life: *Re Bagot*, 1894, 1 Ch. 177; 63 L. J. Ch. 515.

Separate use,

(*x*) Before 1883 this limitation of a term was common in practice for the purpose of supporting the separate use. Now a life estate can be given direct to a married woman, who will take it as her separate property. This conveyance is made under S. L. Act, 1882, s. 61.

S. L. Act, 1882, s. 58.

(*y*) The vendor here sells in right of the term under S. L. Act, 1882, s. 58 (1) (iv.), and not of the freehold.

S. L. Act, 1882, s. 61.

(*z*) The restraint on anticipation does not prevent the exercise of the S. L. Act powers: S. L. Act, 1882, s. 61 (6).

L. T. Act, 1897, Part I.

(*a*) If the testator died after 1897 the legal estate will have vested in the executors under the L. T. Act, 1897, Part I., and the conveyance (if any) by them to the uses of the will as in Prec. I. of this Group, p. 393, *sup.*, should be recited. If no such conveyance has been executed it should be recited that the trustees have assented to the devise.

a codicil thereto dated the — day of —, which did not affect the aforesaid devise of his real estate), and the said Will and codicil were on the — day of — duly proved at the Principal Probate Registry by the Trustees :

AND WHEREAS on the — day of — the Vendor intermarried with the said W. B. :

Marriage of Vendor.

AND WHEREAS the Vendor, as the person entitled in possession for her separate use under the recited Will to the rents and profits of the hereditaments hereinafter described, has agreed to sell the same to the Purchaser and the fee simple thereof in possession free from incumbrances at the price of £—.

Agreement for sale.

NOW THIS INDENTURE WITNESSETH as follows : —

*(The operative parts will be the same as in Precedent I. of this Group, p. 395, sup. (b).)*

IN WITNESS, &c.

## No. XII.

CONVEYANCE of FREEHOLDS by TRUSTEES for the purposes of the SETTLED LAND ACTS acting on behalf of an INFANT TENANT for LIFE (c).

THIS INDENTURE, made, &c., BETWEEN M., of, &c., and N., of, &c. *(the trustees)* (hereinafter called the Vendors), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Parties.

WHEREAS under the Will dated the — day of —, and proved at the Principal Probate Registry on the — day of — by the executors therein named, A. B. *(an infant)*, of —, in the County of —, is now [*or if of full age would be*] tenant for life in possession of the hereditaments hereinafter described, and the Vendors are the present Trustees *(d)* of the Settlement

Recital of will.

*(b)* Under the M. W. P. Act, 1893, s. 1, the covenant implied by the conveyance of the vendor As Beneficial Owner binds her present and future separate estate which she is not restrained from anticipating.

*(c)* See S. L. Act, 1882, s. 60.

*(d)* If there are no trustees of the settlement the Court can either appoint new trustees or persons to exercise S. L. Act powers on behalf of the infant : S. L. Act, 1882, s. 60 ; in which case the order will be recited in the conveyance (see next Precedent). The usual practice is to apply alternatively for the appointment of trustees or of persons to exercise the S. L. Act

Sale on behalf of infant tenant for life.

made by the said Will for the purposes of the Settled Land Acts, 1882 to 1890 :

Agreement  
for sale.

AND WHEREAS the Vendors on behalf of the said A. B. have agreed to sell the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances to the Purchaser at the price of £—— :

Conveyance by  
Vendors on  
behalf of  
infant.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the sum of £—— paid by the Purchaser to the Vendors as such Trustees as afore-said (the receipt of which sum the Vendors hereby acknowledge), the Vendors, in exercise of the power for this purpose conferred on them by section sixty of the Settled Land Act, 1882, and of all other powers, and as Trustees, hereby convey unto the Purchaser

Parcels.

ALL THOSE, &c. (*see Forms in Sect. II., sup.*),

Habendum.

TO HOLD unto and TO THE USE of the Purchaser in fee simple, discharged from all the limitations, trusts, powers and provisions of the recited Will and from all estates, interests and charges subsisting or to arise thereunder.

(*Add acknowledgment for production of documents, Form No. 6, Sect. III., sup., if required.*)

IN WITNESS, &c.

### No. XIII.

#### CONVEYANCE of FREEHOLDS under the SETTLED LAND ACTS by a PERSON appointed to exercise the STATUTORY POWERS on behalf of an INFANT seised in FEE SIMPLE in POSSESSION (c).

Parties.

THIS INDENTURE, made, &c., BETWEEN M., of, &c., and N., of, &c. (*the persons appointed to convey*) (hereinafter called the Vendors), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part.

Recital of  
intestacy.

WHEREAS H. B., being at his death seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, died on the —— day of —— intestate, leaving

powers. Sometimes the order is confined to a particular sale, but trustees will be appointed where more convenient, see Wolst. Conv. Acts, 9th ed., 423, 424.

(c) See S. L. Act, 1882, ss. 59, 60. If the intestate died after 1897 then his personal representative can make title unless he has conveyed the land to the infant. If such conveyance has been made it must be recited.

A. B., of, &c., his eldest son and heir-at-law, an infant, who was born on the — day of —, but no widow him surviving.

[AND WHEREAS by an Order of the Chancery Division of the High Court of Justice made on the — day of —, In the matter of the said A. B., by the Honourable Mr. Justice —, the Vendors were appointed to be the guardians of the said infant :

[Order appointing guardians.]

AND WHEREAS the Vendors, on behalf of the said infant, entered into a provisional contract for the sale to the Purchaser of the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £— :]

[Provisional contract for sale]

AND WHEREAS by an Order (f) (hereinafter called the Order of 19—) of the Chancery Division of the High Court of Justice, made on the — day of —, 19—, by the Honourable Mr. Justice —, In the matter of the estate situated at —, in the County of —, being settled land within the meaning of the Settled Land Act, 1882, section fifty-nine, by reason of A. B. being an infant, and In the matter of the said Act, the said contract was directed to be carried into effect, and the Vendors were authorised on behalf of the said A. B. during his minority to exercise the powers conferred on a tenant for life by the said Acts concerning the sale of land, And the money to arise from the said sale was directed to be paid into Court to the credit of the said matter (g) :

Order directing contract to be carried out and authorising Vendors to convey.

AND WHEREAS on the — day of — the Purchaser duly paid into court to the credit of the said matter the sum of £—, which payment the Vendors hereby acknowledge :

Payment into Court.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and Order of 19—, and in consideration of the payment into Court as aforesaid, the Vendors, in exercise of the power for this purpose conferred on them by the Order of 19— and the Settled Land Act, 1882, and of all other powers, hereby convey unto the Purchaser

Conveyance by Trustees on behalf of infant.

(f) For Forms of Orders, see Seton, 6th ed., 1816 *et seq.*

(g) It would seem that the order should provide for payment into Court : *Re Dudley* (1887), 35 Ch. D. 338; 56 L. J. Ch. 478. It was there held that where persons are appointed to exercise the powers of an infant tenant for life they can make a good title without trustees of the settlement being appointed under S. L. Act, 1882, s. 38. If no guardians were appointed and no provisional contract made the order will not refer to any contract, and the recitals will be varied.

Trustees not necessary where persons appointed to exercise S. L. Act powers on behalf of an infant.

If the intestate's widow is entitled to dower with or without a charge under the Intestates' Estates Act, 1890, S. L. Act trustees should be appointed by the Court of the settlement so created by operation of law.

How widow's rights should be bound.

Parcels.

ALL THOSE, &c. (*see Forms in Sect. II., sup.*),

Habendum.

TO HOLD unto and TO THE USE of the Purchaser in fee simple.

(*Add acknowledgment for production of documents, Form No. 6, Sect. III., sup., if required. Also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

#### No. XIV.

#### CONVEYANCE of FREEHOLDS by the COMMITTEE [*or* RECEIVER] of a LUNATIC TENANT for LIFE (*h*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), a person of unsound mind, as [not so] found by inquisition, acting by E. F. (hereinafter called the Committee [Receiver]), the Committee [Receiver] of his estate, of the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part :

Recital of Settlement.

WHEREAS (*Recite Settlement as in Form No. 10, Sect. I., sup., showing that the Trustees are the present trustees (i)*) :

Recital of inquisition.

AND WHEREAS by an inquisition taken before — Esqre., one of the Masters in Lunacy, on the — day of — under a Commission of Lunacy duly issued for that purpose the Vendor was found to be a person of unsound mind :

Order appointing Committee (Receiver).

AND WHEREAS by an Order in Lunacy made on the — day of —, In the matter of A. B., a person of unsound mind [not so found] the Committee [Receiver] was appointed to be the committee of the person and [Receiver of the] estate of the Vendor :

Agreement for sale.

AND WHEREAS the Committee [Receiver] lately agreed on behalf of the Vendor to sell the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances to the Purchaser at the price of £—, subject to the approbation of the Judge in Lunacy (*k*) :

Lunatic tenant for life.

(*h*) See S. L. Act, 1882, s. 62. A lunatic “not so found” is now in the same position as a person who has been found a lunatic by inquisition, and his *quasi*-committee or receiver can exercise the S. L. Act powers on his behalf : Lunacy Act, 1908, s. 1.

(*i*) Notice under s. 45 of the S. L. Act, 1882, must be served on the trustees, and, if necessary, trustees must be appointed for the purpose : *Re Taylor* (1883), 31 W. R. 596. Omit the next recital if there has been no inquisition.

An order in lunacy is necessary to enable the committee to give the notice required : *Re Ray's S. E.*, 25 Ch. D. 464 ; 53 L. J. Ch. 205.

(*k*) As to the powers of the Judge in Lunacy, see Lunacy Acts, 1890, s. 135 ; 1891, s. 27.

AND WHEREAS by a further Order made on the — day of —, In the matter aforesaid and in the matter of the Settled Land Acts, 1882 to 1890, the Committee (*l*) [Receiver] was authorised in the name and on behalf of the Vendor to exercise the powers conferred on a tenant for life by the said Acts concerning the sale of land and the money arising from such sales was directed to be paid to the Trustees, And it was ordered that it should be referred to the Masters in Lunacy to settle and approve of proper conveyances of any hereditaments so sold :

Order conferring S. L. Act powers on Committee [Receiver].

AND WHEREAS one of the Masters in Lunacy has, pursuant to the last-mentioned Order, settled and approved of these presents as a proper conveyance to the Purchaser as appears from the seal of the said Masters in the margin hereof :

Approval of conveyance.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Trustees as such trustees as aforesaid (the receipt of which sum the Trustees hereby acknowledge), the Vendor, As Beneficial Owner (*m*), acting by the Committee [Receiver] and in exercise of the powers conferred by the last mentioned Order, and the Settled Land Acts, 1882 to 1890, and of all other powers, hereby conveys unto the Purchaser

Conveyance by Vendor acting by his Committee [Receiver].

ALL THAT, &c. (*see Forms, Sect. II., sup.*),

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple, discharged from all the limitations, trusts, powers and provisions of the recited Settlement, and from all estates, interests and charges subsisting or to arise thereunder.

Habendum.

2. PROVIDED ALWAYS, that so far as regards (*continue as in Form No. 1, Sect. III., sup.*).

Proviso restricting implied covenants for title.

3. THE Vendor hereby acknowledges (*continue as in Form No. 6, Sect. III., sup., if required.*).

Acknowledgment and undertaking as to documents.

IN WITNESS, &c. (*Add Schedules if required.*)

(*l*) The Court will make an order in general terms : *Re Gaitskill* (1889), 40 Ch. D. 416; 58 L. J. Ch. 262.

(*m*) The committee signs the name of the lunatic : S. L. Act, 1882, s. 62. A committee can, under s. 124 of the Lunacy Act, 1890, on behalf of the lunatic enter into usual and proper covenants, including covenants for title : *Re Ray*, 1896, 1 Ch. 468; 65 L. J. Ch. 316. If the committee conveyed simply As Committee, only the covenant against incumbrances would be implied, see Conv. Act, 1881, s. 7 (F).

(*This deed should be executed by the Committee or Receiver in the name of the lunatic, thus (n):—*

A. B., by E. F., his Committee [Receiver].)

*The attestation clause will be :—*

Signed, sealed, and delivered by the within-  
named A. B., by E. F., his Committee [Re-  
ceiver], in the presence of —.

No. XV.

CONVEYANCE of FREEHOLDS under the SETTLED LAND  
ACTS by the OWNER of a BASE FEE (o).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*owner of the base fee*) (hereinafter called the Vendor), of the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part :

Recital of Settlement.

WHEREAS by an Indenture of Settlement dated the — day of —, and made between H. B. (since deceased) of the 1st part, J. F., spinster (afterwards and hereinafter called J. B.), of the 2nd part, and the Trustees of the 3rd part (being a Settlement made in consideration of the marriage solemnised on the — day of — between the said H. B. and J. B.), the hereditaments hereinafter described (with other hereditaments) were limited To the use of the said H. B. during his life, with remainder subject to a yearly jointure rent-charge of £— thereby limited to the said J. B. during her life in the event (which happened) of her surviving the said H. B., To THE USE of the first and other sons of the said H. B. successively according to seniority in tail male with remainders over, And the Trustees were thereby appointed to be trustees thereof and of any compound settlement consisting of the said Indenture and of any instrument subsequently executed for all the purposes of the Settled Land Acts, 1882 to 1890 (p) :

(n) S. L. Act, 1882, s. 62 ; see also *Laurie v. Lees* (1881), 7 A. C. 19 ; 51 L. J. Ch. 209, as to what is a sufficient execution by a committee.  
(o) See S. L. Act, 1882, s. 58 (1) (iii).  
(p) As to when compound settlement trustees are necessary, see *Wolst.*

AND WHEREAS there was issue of the said marriage (among other children) an eldest son, namely, the Vendor, who was born on the — day of — and accordingly became tenant in tail male in remainder under the limitations of the recited Settlement :

Recital that Vendor became tenant in tail.

AND WHEREAS by an Indenture of Disentail dated the — day of — (q) (duly enrolled as a disentailing assurance), and made between the Vendor of the one part and X. (*grantee to uses*) of the other part, the Vendor (without the consent of his father, the protector of the said Settlement (r) ), conveyed the hereditaments subject to the limitations of the recited Settlement (including the hereditaments hereinafter described) to the said X. in fee simple (subject to the life estate of the said H. B. and to the said contingent rent-charge limited to the said J. B.), discharged from all estates in tail male or in tail of the Vendor and all estates, rights, interests and powers to take effect after the determination or in defeasance of such estates in tail male or in tail or any of them and so discharged, To THE USE of the Vendor in fee simple, thereby creating a base fee :

Disentailing deed creating base fee.

AND WHEREAS the said H. B. died on the — day of — (s):

Death of tenant for life.

AND WHEREAS the Vendor, as the person entitled to the said base fee, has agreed to sell the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances to the Purchaser at the price of £— :

Agreement for sale.

Conv. Acts, 9th ed., 419; *Re Morhead's S. E.* (1893), W. N. 180. In the case taken in the text the purchase-money can be paid to the trustees of the settlement creating the estate tail without applying to the Court under S. L. Act, 1882, s. 38.

(q) This deed will of course have been executed after the vendor attained full age.

(r) See Fines and Recoveries Act, 1833, s. 34. As the protector did not consent, the disentailing assurance only created a base fee. The protector may consent after the disentailing assurance is executed and after the death of the tenant in tail: *Whitmore-Searle v. W.-S.*, 1907, 2 Ch. 332; 76 L. J. Ch. 576. Where several persons are protectors the office devolves on the survivor: *Cohen v. Bagley-Worthington*, 1908, A. C. 97; 77 L. J. Ch. 363.

(s) After the death of the tenant for life the vendor can bar again and create an estate in fee simple subject to the jointure rent-charge. Even if this were done, the vendor having once had the statutory powers would not lose them. If, however, the settlement contained a power of sale instead of an appointment of trustees for the purposes of the S. L. Acts, then the power would (unless expressly kept on foot by the confirmatory disentailing assurance) be destroyed when the fee simple was created, and it would be necessary to apply to the Court under S. L. Act, 1882, s. 38.

Enlargement of base fee.

NOW THIS INDENTURE WITNESSETH as follows:—

*(The operative parts will be the same as in Precedent I., p. 395, sup., of this Group, but the property will be expressed to be discharged from the limitations, &c., of the recited Disentailing Assurance as well as of the Settlement.)*

IN WITNESS, &c.

## No. XVI.

### CONVEYANCE of FREEHOLDS under the SETTLED LAND ACTS by a TENANT by the CURTESY (t).

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*tenant by the curtesy*) (hereinafter called the Vendor), of the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Purchaser), of the 3rd part:

Recital of marriage and birth of issue. WHEREAS on the — day of — the Vendor intermarried with Jane B. and there was issue born alive of such marriage (u):

Recital of death of wife seised in fee. AND WHEREAS the said Jane B. died intestate on the — day of — seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, of which the Vendor became and now is tenant by the curtesy:

Agreement for sale. AND WHEREAS the Vendor, as tenant by the curtesy, has agreed to sell the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances to the Purchaser at the price of £—:

Recital of Order appointing S. L. Act Trustees. AND WHEREAS by an Order of the Chancery Division of the High Court of Justice made on the — day of — by the Honourable Mr. Justice —, In the matter of the said hereditaments settled by a settlement deemed to be existing under the Settled Land Acts, 1882 and 1884, and made by the said Jane B., and In the matter of the said Acts (19— B. No.—),

Tenant by the curtesy. (t) See S. L. Act, 1882, s. 58 (i.), (vii.); also S. L. Act, 1884, s. 8, which provides that for the purposes of the former Act the estate of a tenant by the curtesy shall be deemed to be an estate arising under a settlement made by his wife.

Conveyance by administrator. (u) To entitle the husband to an estate by the curtesy there must have been issue born alive of the marriage. And see Dissertation on Husband and Wife in Vol. II. If the wife died after 1897 then the conveyance by her administrator to the use of the husband for life with remainder to the use of the heir-at-law in fee simple must be recited.

the trustees were appointed to be Trustees of such Settlement for the purposes of the said Acts :

NOW THIS INDENTURE WITNESSETH as follows :—

*(The operative parts will be the same as in Precedent I., p. 395, sup., of this Group.)*

IN WITNESS, &c.

# No. XVII.

CONVEYANCE of FREEHOLDS *where the SALE and PURCHASE are both made under the POWERS of the S. L. ACTS.*

THIS INDENTURE, made, &c., BETWEEN A. X., of, &c. (*tenant for life*) (hereinafter called the Vendor), of the 1st part, M., of, &c., and N., of, &c. (*trustees of the Vendor's Settlement*) (hereinafter called the X Trustees), of the 2nd part, C. Y., of, &c. (*tenant for life*) (hereinafter called the Purchaser), of the 3rd part, and K., of, &c., and L., of, &c. (*trustees of the Purchaser's Settlement*) (hereinafter called the Y Trustees), of the 4th part :

WHEREAS by an Indenture of Settlement (hereinafter called the X Settlement) dated, &c., the hereditaments hereinafter described were (with other hereditaments) limited to uses under which the Vendor is tenant for life in possession, and the X Trustees are the trustees of that Settlement for the purposes of the Settled Land Acts, 1882 to 1890 :

AND WHEREAS by another Indenture of Settlement (hereinafter called the Y Settlement) dated, &c., the mansion house called —, and divers other hereditaments situated in, &c., were limited to uses under which the Purchaser is tenant for life in possession, and the Y Trustees are the trustees of that Settlement for the purposes of the Settled Land Acts, 1882 to 1890.

AND WHEREAS the Y Trustees as such trustees as aforesaid have in their hands capital money liable to be laid out in the purchase of land to be made subject to the limitations of the Y Settlement :

AND WHEREAS the Vendor has agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of

Parties.

Recital of Vendor's Settlement.

Recital of Purchaser's Settlement.

Capital money in hands of Y trustees.

Agreement for sale and direction to apply capital money.

£——, and the Purchaser has directed the Y Trustees to apply part of the said capital money in payment of the said purchase-money :

NOW THIS INDENTURE WITNESSETH as follows :—

Conveyance to Trustees of Purchaser's Settlement to uses of that Settlement.

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Y Trustees by the direction of the Purchaser to the X Trustees as such trustees as aforesaid (the receipt of which sum the X Trustees hereby acknowledge) the Vendor, in exercise of the power for this purpose conferred on him by the Settled Land Acts, 1882 to 1890, and of all other powers, and As Beneficial Owner, hereby conveys unto the Y Trustees

Parcels.

ALL, &c. (*see Forms in Sect. II., sup.*),

Habendum.

To hold unto the Y Trustees in fee simple, To the uses, Upon the trusts and subject to the powers and provisions which under the Y Settlement or by reason of the exercise of any power of charging therein contained are subsisting with respect to the freehold hereditaments thereby settled, but not so as to increase or multiply charges or powers of charging.

Proviso restricting implied covenants for title.

2. PROVIDED ALWAYS, that so far as regards (*continue as in Form No. 1, Sect. III., sup.*)

Acknowledgment and undertaking as to documents.

3. THE Vendor hereby acknowledges (*continue as in Form No. 6, Sect. III., if required ; also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c. (*Add Schedules as required.*)

## No. XVIII.

CONVEYANCE of FREEHOLDS where TRUSTEES are expressly given SETTLED LAND ACT POWERS and POWERS of REVOCATION and NEW APPOINTMENT, there being no TENANT for LIFE within the meaning of those Acts(x).

Parties.

THIS INDENTURE, made, &c., BETWEEN M., of, &c., and N., of, &c. (*the trustees*) (hereinafter called the Vendors), of the one

Sale by trustees where no tenant for life.

(x) In practice a conveyance is nearly always taken from a tenant for life, though express powers of sale are conferred on the trustees. This Precedent covers the case where there is no tenant for life within the meaning of the S. L. Acts, see, *Re Atkinson* (1885), 30 Ch. D. 605; aff. (1886),

part, and A. B., of, &c. (hereinafter called the Purchaser), of the other part:

WHEREAS E. F., being at his death seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, duly made his Will dated the —— day of ——, and thereby, after appointing the Vendors to be his executors and trustees, devised all his real estate (including the hereditaments hereinafter described) To the use of the Vendors during the life of the said A. B., Upon trust to apply the rents and profits thereof for the benefit of the said A. B. and his wife and children and other persons therein referred to or any one or more of them exclusively of the other or others, as the Vendors should, without being liable to account, think fit, with remainders over. And power was thereby conferred on the Vendors during the life of the said A. B. to exercise in reference to any hereditaments for the time being subject to the limitations of the recited Will all the powers conferred on a tenant for life in possession of land by the Settled Land Acts, 1882 to 1890, and for such purposes to revoke the uses thereinbefore declared and to appoint the hereditaments thereby devised or any part thereof to uses to give effect to the transaction (y):

Recital of will conferring S. L. Act powers on the Vendors.

AND WHEREAS the said testator died on the —— day of —— 1890 (z), without having revoked or altered his said Will, which

Death of testator and probate.

31 *ib.* 577; 55 L. J. Ch. 49; *Re Tessyman's S. E.* (1897), 42 Sol. J. 96. Compare the case where a life interest in the rents and profits is given subject to the beneficiary maintaining children: *Williams v. Jenkins*, 1893, 1 Ch. 700; 62 L. J. Ch. 665; *Re Theaker's S. E.*, 1898 T. No. 1250 (in Chambers, 8th August, 1898); *Re Pollock*, 1906, 1 Ch. 146; 75 L. J. Ch. 120; Wolst. Conv. Acts, 9th ed., 332.

Where trustees with a power of sale do sell, the tenant for life should consent: S. L. Act, 1882, s. 56 (2). If there are several persons who together constitute a tenant for life, the consent of any one of them is sufficient: S. L. Act, 1884, s. 6 (2). If, however, the shares are separately settled, each beneficiary is only tenant for life of his share and all must join and consent: *Re Osborne and Bright*, 1902, 1 Ch. 335; 71 L. J. Ch. 285.

Sale by trustees, where there is a tenant for life: consent necessary.

(y) If the limitation had been to the use of the trustees in fee simple, this power to revoke the uses would not have been necessary. In the case in the text the trustees have only an estate *pur autre vie*.

(z) If the testator died after 1897 title would either be made under Part I. of the Land Transfer Act, 1897, or the conveyance by the executors to the uses of the Will should be recited, according to the circumstances.

was on the — day of — duly proved at the — Probate Registry by the Vendors:

Agreement  
for sale.

AND WHEREAS the Vendors have agreed to sell the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances to the Purchaser at the price of £—:

Revocation  
and appoint-  
ment.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge), the Vendors, in exercise of the powers for this purpose (a) conferred on them by the recited Will and of all other powers, hereby REVOKE all the limitations, trusts, powers and provisions by the recited Will declared concerning the hereditaments hereinafter described and As Trustees hereby APPOINT that

Parcels.

ALL THOSE, &c. (*see Forms in Sect. II., sup.*), shall henceforth remain and be

To the USE of the Purchaser in fee simple.

(*Add acknowledgment for production of documents, Form No. 6, Sect. III., sup., if required.*)

IN WITNESS, &c.

## No. XIX.

### CONVEYANCE of FREEHOLDS by APPOINTMENT under a GENERAL POWER.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B. [*or* A. B. the wife of E. B. (b)], of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part:

Recital of  
Settlement.

WHEREAS under an Indenture of Settlement dated the — day of —, and made, &c., the hereditaments hereinafter described (with other hereditaments) now stand limited free from

(a) It is conceived that if the Will did not contain an express power to revoke, &c., the power might be implied as necessary to enable the trustees to give effect to the powers given to them by reference to the S. L. Acts. An easement can be created *de novo* under a power of appointment: Conv. Act, 1881, s. 62.

(b) If the vendor is a married woman the deed, being an appointment, need not be acknowledged by her, and the concurrence of her husband is not necessary.

incumbrances to such uses as the Vendor shall [whether covert or sole] by deed appoint, with remainders over in default of any such appointment :

AND WHEREAS the Vendor has agreed to sell the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances to the Purchaser at the price of £—— : Agreement for sale.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, in exercise of the power for this purpose conferred on him [her] by the recited Settlement and of all other powers, and As Beneficial Owner, hereby appoints that

ALL THOSE, &c. (*see Forms in Sect. II., sup.*), shall henceforth remain and be To THE USE of the Purchaser in fee simple. Parcels.

(*Add acknowledgment for production of documents and undertaking for safe custody, Form No. 6, Sect. III., sup.; also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

## GROUP F.—CONVEYANCES ON SALE BY TRUSTEES HOLDING LAND ON TRUST FOR SALE.

### NO. I.

CONVEYANCE of FREEHOLDS by TRUSTEES for SALE under a SETTLEMENT by way of TRUST for SALE. VARIATIONS where the TRUST for SALE is created by a WILL (c).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*trustees for sale*) (hereinafter called the Vendors), of Parties.

(c) See T. Act, 1893, ss. 13—16. In this Precedent the case is taken of a sale during the lives of the persons entitled to life interests in the rents and profits till sale or the income of the proceeds of sale. Trusts for sale.

A trust for sale is not necessarily spent because the beneficiaries are all *sui juris*: *Biggs v. Peacock* (1882), 22 Ch. D. 284; 52 L. J. Ch. 1; *Re Tredell and Miles* (1884), 27 Ch. D. 315; 54 L. J. Ch. 71; *Re Douglas and Powell*, 1902, 2 Ch. at p. 313; 71 L. J. Ch. 850. But the trust may be bad as infringing the rule against perpetuities: *Re Applyby*, 1903, 1 Ch. 565; 72 L. J. Ch. 332, and cases therein cited. Where trustees for sale have power to postpone sale, the vesting in possession of the share of one beneficiary does not entitle that beneficiary to call for an immediate sale or for a Duration.

the 1st part, E. F., of, &c., and J. F., his wife, of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part :

Recital of conveyance on Trust for sale.

WHEREAS by an Indenture dated the — day of — (*continue Form No. 15, Sect. I., sup.*):

[Variation : Recital of Will and probate.]

[WHEREAS X. Y., deceased, being at his death (*continue Form No. 16, Sect. I., sup. (d)*) :

Agreement for sale.

AND WHEREAS the Vendors (*Form No. 17, Sect. I., sup.*):

NOW THIS INDENTURE WITNESSETH as follows :—

Conveyance by trustees for sale.

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors as such trustees as aforesaid (the receipt of which sum the Vendors hereby acknowledge), the Vendors, As Trustees and by the direction of the said E. F. and J. F. (*c*) [each of them directing As Beneficial Owner(*f*)] testified as aforesaid, hereby convey unto the Purchaser

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conveyance of his share in the land : *Re Horsnail*, 1909, 1 Ch. 631 ; 78 L. J. Ch. 331.

Powers of sale. The duration of a power of sale is, if the rule against perpetuities is not infringed, a question of intention : *Re Jupp*, 1903, 1 Ch. 129 ; 72 L. J. Ch. 16, see, also *Re Lord Sudeley and Baines*, 1894, 1 Ch. 334 ; 63 L. J. Ch. 191 ; *Re Dyson and Fowler*, 1896, 2 Ch. 720 ; 65 L. J. Ch. 791 ; and see *Re Kaye and Hoyle* (1909), 53 Sol. J. 520.

(*d*) This Form takes the case of a mere trust for sale without requests being necessary, but can, of course, be readily adapted to meet the case where requests are required. If the testator died after 1897 and the executors have not assented to the devise, title may be made under L. T. Act, 1897, Part I.

Whether general prospective consent to sale is sufficient, &c.

(*e*) Where the consent of a person is required to a sale by trustees, the consent should be given to the particular sale; a general prospective consent to the trustees selling would be insufficient. A consent to the property being put up for sale by auction is, of course, a consent to the sale which is the result of the auction. If the party whose consent is required has incumbered his interest (*cf.* the case of a tenant for life under the S. L. Acts, see S. L. Act, 1882, s. 50 (3)), the consent of the incumbrancer is necessary : *Re Bedingfield and Herring*, 1893, 2 Ch. 332 ; 62 L. J. Ch. 430. If he is a lunatic, his committee, or a receiver appointed under s. 116 of the Lunacy Act, 1890, can consent on his behalf by order of the Judge in Lunacy : s. 120. The consent of a tenant for life of the proceeds of sale is not necessary, unless the consent is required by the terms of the trust : S. L. Act, 1884, s. 6 (1).

Covenants for title by beneficiaries

(*f*) Where, as in the case of a conveyance on trust for sale, the trusts are kept off the title, it seems unreasonable that the persons who request a sale

ALL THOSE, &c. (*see Forms in Sect. II., sup.*),

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple, discharged from all the trusts, powers, and provisions of the recited Settlement [Will].

Habendum.

[2. PROVIDED ALWAYS, that the statutory covenants implied in these presents by reason of the said E. F. and J. F. being expressed to direct As Beneficial Owners shall not extend to the acts or defaults of any person other than and besides himself and herself and persons claiming under or in trust for him or her (*g*).]

[Proviso qualifying covenants for title by beneficiaries.]

[3. *Acknowledgment for production of documents, Form No. 6, Sect. III., sup. Add Form No. 11 if required.*]

Documents.

IN WITNESS, &c.

## No. II.

DEED OF COVENANT to surrender COPYHOLDS on a SALE by TRUSTEES under a TRUST for SALE in a SETTLEMENT. VARIATIONS where the TRUST for SALE is created by a WILL (*h*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*trustees for sale*) (hereinafter called the Vendors), of

Parties.

should give covenants for title when the trustees sell. The purchaser is not entitled to go into the settlement of the proceeds of sale, and accordingly has not notice as to the interests of the persons directing the sale. Possibly, in the case of a Will where the trusts are disclosed, covenants for title should be given, but in that case the interests of the beneficiaries should be recited and their covenants cut down as provided by the text. In practice the conditions of sale nearly always provide, where there is a trust for sale, that the purchaser shall not be entitled to covenants from the beneficiaries. Apart from such condition, according to the decision in *Earl Ponlett v. Hood* (1868), L. R. 5 Eq. 115; 37 L. J. Ch. 224; *Re Sargy and Baring's Contract* (1884), W. N. 192; 53 L. J. Ch. 1104; and see Dart, 7th ed., 569; Williams, V. & P. 580, it would seem that the purchaser could call for such covenants. This does not apply on a sale by the Court (*Cottrell v. C.* (1866), L. R. 2 Eq. 330; 35 L. J. Ch. 466), as the purchaser is only concerned to see that the person, in whom the legal estate is vested conveys and that the equities are bound by the order.

on sales by trustees where their consent to the sale is necessary.

(*g*) This provision will only be required where covenants for title are given by the beneficiaries.

(*h*) See Prec. VI., Group G, p. 442, *inf.*, for a form when copyholds are

the 1st part, E. F., of, &c., and J. F., his wife, of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part :

Recital of Settlement and admittance of Vendors.

Variation : Recital of Will, probate, and admittance of Vendors.

Agreement for sale.

WHEREAS by an Indenture of Settlement dated the — day of — (continue *Form No. 25, Sect. I., sup.*):

[ WHEREAS X. Y., deceased, being at his death (continue *Form No. 27, Sect. I., sup. (i)* ) :

AND WHEREAS the Vendors, as such Trustees as aforesaid, have at the request of the said E. F. and J. F. (testified by their execution hereof) agreed to sell the hereditaments hereinafter described to the Purchaser free from incumbrances for an estate of inheritance according to the custom of the said Manor at the price of £ — :

Covenant to surrender.

NOW THIS INDENTURE WITNESSETH that in pursuance, &c. (as in last Precedent), the Vendors, As Trustees and by the direction of the said E. F. and J. F. (testified as aforesaid), hereby covenant with the Purchaser that the Vendors will forthwith at the cost of the Purchaser surrender or cause to be surrendered into the hands of the lord of the said Manor according to the custom thereof

Parcels.

ALL, &c. (see *Form No. 17, Sect. II., sup.*) (to which hereditaments the Vendors were admitted as aforesaid),

To THE USE of the Purchaser, his heirs and assigns, at the will of the lord according to the custom of the said Manor at and under the rents, fines, heriots, suits and services therefor due and of right accustomed.

(Add acknowledgment for production of documents, *Form No. 6, Sect. III., sup.* ; also *Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

devised to such uses as the executors may appoint. For Precedents of surrenders and admittances, see Group A, Precs. VI. and VII., pp. 329—30, *sup.*

(i) This Form takes the case of a trust for sale without requests being necessary ; but can, of course, be readily adapted to meet the case where requests are required to the sale.

No. III.

ASSIGNMENT *of* LEASEHOLDS *by* TRUSTEES *for* SALE  
under a SETTLEMENT *by way of* TRUST *for* SALE. VARI-  
ATIONS *where the* TRUST *for* SALE *is created by a* WILL *(k)*.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and Parties.  
C. D., of, &c. (*trustees for sale*) (hereinafter called the Vendors), of  
the 1st part, E. F., of, &c., and J. F., his wife, of the 2nd part,  
and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd  
part :

WHEREAS by an Indenture of Lease (*Form No. 28, Sect. I., sup.*) : Recital of  
Lease.

AND WHEREAS by an Indenture of Assignment dated the — Recital of  
day of — (*continue as in Form No. 31, Sect. I. (l)*) : Assignment *or*  
Will bequeath-

AND WHEREAS the Vendors, as such Trustees as aforesaid, have, ing the pro-  
with the consent of the said E. F. and J. F. testified by their perty on trust  
execution of these presents, agreed to sell to the Purchaser free for sale.  
from incumbrances the premises comprised in the recited Lease Agreement  
for the residue of the term thereby granted at the price of £——: for sale.

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN pursuance of the said agreement, &c. (*as in Precedent I., Assignment by*  
*p. 427, of this Group*), the Vendors, As Trustees and by the trustees for  
the direction of the said E. F. and J. F. (testified as aforesaid), sale.  
hereby assign unto the Purchaser

ALL the premises comprised in and demised by the recited Parcels.  
Lease,

TO HOLD unto the Purchaser for the residue of the term  
granted by the recited Lease at the rent and subject to the lessee's  
covenants and the conditions by and in the said Lease reserved  
and contained and henceforth on the part of the lessee to be  
paid, observed, and performed, But discharged from all the trusts,  
powers and provisions of the recited Settlement [Will].

2. THE Purchaser hereby (*Form No. 5, Sect. III., sup.*).

3. THE Vendors hereby acknowledge (*Form No. 6, Sect. III., Covenant by*  
*sup. ; also Form No. 11, Sect. III., if required*). Purchaser to  
Documents.

IN WITNESS, &c.

(k) Trustees who are selling leaseholds in lots held under one lease can  
grant underleases to the several purchasers: *Re Judd and Poland*, 1906,  
1 Ch. 684; 75 L. J. Ch. 403.

(l) The necessary variations in the case of a Will are given in this Form.

## No. IV.

CONVEYANCE of FREEHOLDS, COVENANT to surrender  
COPYHOLDS and ASSIGNMENT of LEASEHOLDS by  
TRUSTEES for SALE (one of whom is a MARRIED WOMAN)  
under a TRUST for SALE in a WILL created for  
purposes of division.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and  
C. D., the wife(*m*) of L. D., of, &c. (hereinafter called the  
Vendors), of the 1st part, the said L. D. of the 2nd part, and  
E. F., of, &c. (hereinafter called the Purchaser), of the 3rd part :

Recital of  
Lease.Recital of  
Will.

WHEREAS by an Indenture of Lease (*Form No. 28, Sect. I., sup.*):

AND WHEREAS X. Y., deceased, being at his death seized of the  
freehold hereditaments first hereinafter described for an estate in  
fee simple in possession and of the copyhold hereditaments  
secondly hereinafter described for an estate of inheritance in  
possession in accordance with the custom of the Manor of —,  
in the County of —, and as to all the said hereditaments free  
from incumbrances, duly made his Will dated the — day of —,  
and thereby, after appointing the Vendors to be his executors and  
trustees, devised and bequeathed all his real and personal estate  
(including the said freehold, copyhold, and leasehold heredita-  
ments) to the Vendors Upon trust to sell (*n*) the same and to stand

M. W. P. Act,  
1907, s. 1.

(*n*) Even after 1907 it will be necessary for the husband of a married  
woman trustee to concur to convey any legal estate, though it will not be  
necessary for the deed to be acknowledged: M. W. P. Act, 1907, s. 1; this  
section was intended to meet the decision in *Re Harkness and Alsopp*, 1896,  
2 Ch. 358; 65 L. J. Ch. 726; but in terms the section only applies to  
property "vested" in the married woman; hence the husband appears to be  
a necessary party to convey any interest which may have vested in him.  
The section does not expressly provide that a married woman may in future  
acquire trust estates as if she were unmarried; and see 51 Sol. J. 782. A  
new Bill has been prepared to take the place of s. 1.

Whether  
beneficiaries  
should join  
on a sale  
by trustees  
where con-  
sents not  
required by  
the instrument  
creating the  
trust.

(*n*) The case is taken here of an absolute trust for sale. As to the  
duration of a power of sale for purposes of division, see *Peters v. Lewes, &c.*  
*Lig. Co.* (1881), 18 Ch. D. 429; 50 L. J. Ch. 172; and first note to Prec. I.,  
p. 427, of this Group. If the purchaser has notice that the beneficiaries are  
all *sui juris* and have been in possession of the property so as to raise a ques-  
tion as to whether they have elected to take the property *in specie*, it may be  
desirable to make them parties to direct the sale and convey as beneficial  
owners. Sometimes it is found that trustees are selling when they have

possessed of the net proceeds of such sale upon the trusts therein mentioned :

AND WHEREAS the said testator died on the — day of — without having revoked or altered his said Will, which was on the — day of — duly proved at the — Probate Registry by the Vendors :

Death of testator and probate.

AND WHEREAS on the — day of — the Vendors were duly admitted to the said copyhold hereditaments, to hold to them and their heirs by copy of court roll at the will of the lord according to the custom of the said Manor by and under the rents, suits and services therefor due and of right accustomed :

Admittance of Vendors to copyholds.

AND WHEREAS the Vendors have agreed to sell to the Purchaser free from incumbrances the freehold and copyhold hereditaments hereinafter described and the premises comprised in the recited Lease for the residue of the term thereby granted at the price of £— of which the sum of £— has for the purposes of stamp duty been apportioned as the purchase-money for the said copyhold hereditaments.

Agreement for sale.

AND WHEREAS the said L. D. has agreed to join in these presents for the purpose of vesting in the Purchaser any estates or interests in the said hereditaments which may be vested in him as the husband of the said C. D. (o).

Agreement by husband of married woman trustee to join.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Vendors as such trustees as aforesaid (the receipt of which sum the Vendors hereby acknowledge), the Vendors, As Trustees, hereby convey, and the said L. D., according to his estate or interest (if any) and As Trustee, hereby conveys and confirms unto the Purchaser

Conveyance of freeholds.

ALL THOSE freehold hereditaments, &c. (*see Forms in Sect. II.*).

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple,

Habendum.

purchased the property in breach of trust and have a mere power to vary investments. In such a case the property becomes stamped with an implied trust for sale, but it is desirable to join a beneficiary.

(o) See M. W. P. Act, 1907, s. 1. No acknowledgment is necessary, but the husband should join to convey any legal interest which may be vested in him until it is decided whether that s. is sufficient to meet *Re Harkness and Allsopp*, 1896, 2 Ch. 358; 65 L. J. Ch. 726.

Concurrence of husband on sale by married woman trustee.

discharged from all the trusts, powers and provisions of the recited Will.

Covenant to  
surrender  
copyholds.

2. IN further pursuance of the said agreement and for the consideration aforesaid, the Vendors, As Trustees, hereby covenant, and the said L. D., As Trustee, hereby covenants with the Purchaser that they will forthwith surrender or cause to be surrendered into the hands of the lord of the said Manor according to the custom thereof

Parcels.

ALL THOSE copyhold hereditaments, &c. (to which hereditaments the Vendors were admitted as aforesaid),

TO THE USE of the Purchaser and his heirs at the will of the lord according to the custom of the said Manor at and under the rents, fines, heriots, suits and services therefor due and of right accustomed.

Assignment of  
leaseholds.

3. IN further pursuance of the said agreement and for the consideration aforesaid, the Vendors, As Trustees, hereby assign, and the said L. D., according to his term or interest and As Trustee, hereby assigns and confirms unto the Purchaser

Parcels.

ALL THE premises comprised in and demised by the recited Lease,

Habendum.

TO HOLD unto the Purchaser for the residue of the term granted by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the said Lease reserved and contained and henceforth on the part of the lessee to be paid, observed, and performed, But discharged from all the trusts, powers and provisions of the recited Will.

Covenant by  
Purchaser to  
pay rent, &c.  
Documents.

4. THE Purchaser hereby (*Form No. 5, Sect. III., sup.*).

5. THE Vendors hereby acknowledge (*Form No. 6, Sect. III.; also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

## No. V.

CONVEYANCE by TRUSTEES for SALE of the SURFACE of  
FREEHOLDS apart from MINES and MINERALS, where the  
TRUSTEES are given the STATUTORY POWERS of a TENANT  
for LIFE.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and  
C. D., of, &c. (*trustees for sale*) (hereinafter called the Vendors), of

the 1st part, E. F., of, &c., and J. F., his wife, of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part :

WHEREAS by an Indenture dated the — day of — (*continue Form No. 15, Sect. I., and add:—*) And the said Indenture contained a power for the Vendors to exercise, with the consent of the said E. F. and J. F., during their joint lives, in reference to the said hereditaments, all the powers conferred on a tenant in possession of land by the Settled Land Acts, 1882 to 1890(*p*) :

Recital of conveyance on trust for sale.

AND WHEREAS the Vendors, as such trustees as aforesaid, have agreed to sell to the Purchaser free from incumbrances the surface of the hereditaments hereinafter described, with such reservations as hereinafter appearing, at the price of £— :

Agreement for sale.

NOW THIS INDENTURE WITNESSETH as follows :—(*continue operative part as in Precedent I. of this Group, p. 428, sup., but using for the parcels Form No. 2, Sect. II., including the reservation of minerals; and see notes to that Form*). *The habendum will be* "To hold unto the Purchaser in fee simple To the use that the Vendors their heirs and assigns shall have and may exercise the easements rights and privileges hereinbefore expressed to be reserved and subject thereto To the use of the Purchaser in fee simple."

Conveyance of surface with reservations of mines and minerals.

IN WITNESS, &c.

# GROUP G.—CONVEYANCES ON SALES BY PERSONAL REPRESENTATIVES.

## No. I.

### CONVEYANCE of FREEHOLDS by the PERSONAL REPRESENTATIVES of a person who died AFTER 1897.

THIS INDENTURE, made &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*personal representatives*) (hereinafter called the Vendors(*r*)), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part :

Parties.

(*p*) See S. L. Act, 1882, ss. 4 (6) and 17; S. L. Act, 1890, s. 5. If these powers are not expressly conferred on the trustees, an order will be required under T. Act, 1893, s. 41, and see T. Act, 1894, s. 3.

(*r*) See L. T. Act, 1897, Part I.; the real estate of a person dying after 1897 now devolves on his personal representatives in the same way as leaseholds devolved before the Act.

L. T. Act, 1897, Part I.

As executors derive their title to the real estate under the Will and not from probate, all who do not renounce probate and disclaim the trusts must

All executors who do not renounce and

*See Conveyancing Act (1911).*

Recital of  
seisin Will and  
probate, or  
intestacy.

WHEREAS X. Y., being at his death seised in fee simple  
(*continue Form No. 18, Sect. I., sup., where variations for the case  
of intestacy will be found*):

Agreement  
for sale.

AND WHEREAS the Vendors, as the personal representatives of  
the said X. Y., deceased, have agreed to sell to the Purchaser the  
hereditaments hereinafter described and the fee simple thereof  
in possession free from incumbrances at the price of £—:

Conveyance.

NOW THIS INDENTURE WITNESSETH that in pursuance  
of the said agreement and in consideration of the sum of £—

disclaim must  
join.

join in the conveyance: *Re Parley*, 1900, 1 Ch. 58; 69 L. J. Ch. 6; one of  
several executors cannot, as in the case of chattels real, make a title to real  
estate without an order of the Court: s. 2. (*See Conveyancing Act (1911)*)

Exception to  
the rule where  
foreign and  
general  
executors.

Where special executors of foreign property are appointed they are not  
necessary parties on a sale of real estate in England by the general  
executors: *Re Cohen*, 1902, 1 Ch. 187; 71 L. J. Ch. 161.

Where no  
executors  
appointed, no  
variation of  
former  
practice.

The Act does not alter the practice of the Court to refuse to grant probate  
to a residuary legatee where no executors are appointed. Letters of  
administration with the Will annexed must be taken out as before: *In  
b. Pryse*, 1904, P. 301; 73 L. J. P. 84.

What estates  
pass to the  
personal repre-  
sentatives.

Generally, as to what estates pass to personal representatives, see Cherry  
and Marigold's Land Transfer Acts, 136 *et seq.*; Wolst. Cony. Acts, 9th ed.,  
183 *et seq.* Equitable estates are within the meaning of the Act: *Phillips v.  
Probyn*, 1899, 1 Ch. 811, 818; 68 L. J. Ch. 401.

Copyholds.

By sub-s. 1 of s. 1 copyholds or customary freeholds, in any case in  
which an admission or any act by the lord of the manor is necessary to  
perfect the title of a purchaser from the customary tenant, are not affected  
by the Act, but this sub-section does not exclude an equitable interest in  
copyholds: *Re Somerville and Turner*, 1903, 2 Ch. 583; 72 L. J. Ch. 727.

Death duties.  
*Quare*, over-  
reached by a  
sale under  
the Act.

A sale by personal representatives under the Act, at any rate after  
probate, overreaches succession duties, see Cherry and Marigold, 146; also  
the provisions relating to registered land, L. T. Act, 1897, s. 13, and L. T. R.,  
1903, r. 209; but a purchaser should insist on a certificate under Fin. Act,  
1894, s. 11, as regards estate duty.

Increment  
value duty.

As s. 5 of the Fin. (1909-10) Act, 1910, makes increment value duty a  
charge on the property where it attaches on a death, a purchaser should also  
insist upon evidence of payment of this duty. It is a stamp duty: *ib.*,  
s. 3 (6) in other cases.

Costs in  
probate action.

The costs incurred in propounding a Will held to be invalid are now  
under s. 2 (3) of the L. T. Act, 1897, payable out of real as well as personal  
estate: *Re Vickerstaff*, 1906, 1 Ch. 762; 75 L. J. Ch. 419.

Application of  
r. 209 of  
L. T. R., 1903,  
as to juris-  
diction.

R. 209 of the L. T. R., 1903 (formerly L. T. R., 1898, r. 234), only applies  
to Part II. of the Act of 1897; hence the exclusive jurisdiction of the senior  
Judge of the Chancery Division does not apply to matters arising under  
Part I.: *Re Walbeck* (1904), W. N. 204.

now paid by the Purchaser to the Vendors as such personal representatives as aforesaid (the receipt of which sum the Vendors hereby acknowledge), the Vendors, As Personal Representatives of the said X. Y., deceased, hereby convey unto the Purchaser

ALL, &c. (*see Forms in Sect. II., sup.*)

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple.

Habendum.

(*Add acknowledgment for production, Form No. 6, Sect. III., also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

## No. II.

### CONVEYANCE of FREEHOLDS by EXECUTORS or DEVISEES IN TRUST selling under a CHARGE of DEBTS contained in the WILL of a person who died BEFORE 1898(s).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Vendors), of the one part,

Parties.

(s) The Law of Property Amendment Act, 1859, s. 14, provides that where a testator has charged his real estate or any part thereof with the payment of his debts, or with the payment of any legacy or other specific sum of money, and has devised the same for his whole interest therein (*see Re Adams and Perry*, 1899, 1 Ch. 551; 68 L. J. Ch. 259) to trustees, the trustees may sell or mortgage such property for the purpose of raising the same, and the purchaser or mortgagee is not bound to see that the power is correctly exercised. S. 16 provides that if a testator has created such a charge as is mentioned in s. 14, and has not devised the hereditaments charged so as to vest his whole estate in trustees, the executors shall have a like power of selling or mortgaging. But these provisions do not apply to a devise to any person in fee or in tail or for the testator's whole estate or interest charged with debts or legacies; s. 18. To come within the exception the devise must be one taking effect as from the testator's death: *Re Barrow Corp'n. and Rawlinson*, 1903, 1 Ch. 339; 72 L. J. Ch. 233. In cases coming within s. 18, *i.e.*, where the real estate is devised to a person in fee or in tail or for the testator's whole estate charged with debts, the devisee, if an executor also, can confer a good title upon a purchaser: *Eland v. E.* (1839), 4 My. & C. 420; 8 L. J. Ch. 289; *Forbes v. Peacock* (1844), 1 Ph. 717; 15 L. J. Ch. 371; and *see Re Henson*, 1908, 2 Ch. 356; 77 L. J. Ch. 598. When the beneficial devisee and executor are different persons, it is still undecided whether (assuming the testator died before 1898) the beneficial devisee can make a good title without the executor, but the better opinion seems to be that he can: *Corser v. Cartwright* (1875), L. R. 7 H. L. 731; 45 L. J. Ch. 605; *West of England, &c. Bank v. Murch* (1882), 23 Ch. D. 138; 52 L. J. Ch. 784; *see also* on this point Dart, 7th ed., 637 *et seq.* As to whether a purchaser is entitled to inquire whether

Persons entitled to sell under charge of debts.

and E. F., of, &c. (hereinafter called the Purchaser), of the other part:

Recital of Will, &c.,

(*Recite Will of X. Y. containing a direction for payment of his debts, and devising his real estate to the Vendors as trustees, or devising his real estate to uses without the intervention of trustees, and appointing the Vendors executors—death of testator and probate of Will*):

and Agreement for sale.

AND WHEREAS in pursuance of the direction for payment of debts contained in the recited Will the Vendors have agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——:

Conveyance by devisees or executors.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge), the Vendors, As Trustees [*or As the Personal Representatives of the said X. Y., deceased*], in exercise of the statutory power for this purpose, hereby convey unto the Purchaser

ALL, &c. (*see Forms in Sect. II., sup.*),

To hold unto and To the use of the Purchaser in fee simple.

(*Acknowledgment as to documents, Form No. 6, Sect. III., also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

the debts have been paid, see s. 17, which provides that in cases coming under ss. 14–16 he is not; but if twenty years have elapsed, see *Re Tanqueray-William and Landau* (1881), 20 Ch. D. 165; 51 L. J. Ch. 434; also (in the case of leaseholds) *Re Whistler* (1887), 35 Ch. D. 561; 56 L. J. Ch. 827; *Re Fern and Forze*, 1894, 2 Ch. 101; 63 L. J. Ch. 303; and *cf. Re Ferrell*, 1903, 1 Ch. 65; 72 L. J. Ch. 41, where the purchaser had actual notice that debts were paid and it was held that the title could not be forced on him.

Administrator cannot sell.

When a testator by his Will charges his real estate with the payment of his debts, and the executors of the Will renounce, an administrator with the Will annexed has no power to sell under the above-mentioned Act: *Re Clay and Tetley* (1880), 16 Ch. D. 3; 50 L. J. Ch. 164.

When express direction to sell vests power of sale in executor.

Where the Will of a person who died before 1898 directs that the real estate shall be sold and the proceeds applied in the payment of debts and legacies, or that the real and personal estate be sold and converted into money and the proceeds divided amongst certain persons as a mixed fund, and no person is named in the Will in either case to exercise the trust, the power to sell will vest in the executors, and their conveyance will carry the legal as well as the equitable estate, see, Dart, 7th ed., 635, and cases there cited.

## No. III.

CONVEYANCE *of* FREEHOLDS *to* PURCHASER, *where* VENDOR  
is DEVISEE *for his own* BENEFIT *subject to* DEBTS and  
LEGACIES *and also* EXECUTOR (*t*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (herein- Parties.  
after called the Vendor), of the one part, and C. D., of, &c.  
(hereinafter called the Purchaser), of the other part :

WHEREAS G. H., being at his death seised in fee simple in  
possession free from incumbrances of the hereditaments herein-  
after described, duly made his Will, &c. : (*Recite Will devising all* Recital of Will.  
*his real and personal estate to the Vendor subject to the payment of*  
*debts and legacies, and appointing him sole executor — death of*  
*testator and probate*) :

AND WHEREAS the Vendor has agreed to sell to the Purchaser Agreement  
the hereditaments hereinafter described and the fee simple for sale.  
thereof in possession free from incumbrances, at the price of  
£—:

NOW THIS INDENTURE WITNESSETH, &c. (*as Pre-*  
*cedent 1., Group A, p. 323, sup., adding at the end, discharged*  
*from the trusts, powers and provisions of the recited Will*).

IN WITNESS, &c.

## No. IV.

CONVEYANCE *of* FREEHOLDS *by* PERSONAL REPRESENTA-  
TIVES *to give effect to a* CONTRACT *for* SALE *entered into*  
*by a* DECEASED VENDOR (*n*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and Parties.  
C. D., of, &c. (*personal representatives of deceased Vendor*)

(*t*) This Precedent may be used whether the testator died before or after 1898. If the devisee and executor are different persons, and the devisee is the vendor, the executor should be made a party for the purpose of assenting. If the testator died after 1897 the executor can sell without the devisee, unless he has assented to the devise.

(*n*) If the deceased vendor died before 1898 title can be made under Conv. Act, 1881, s. 4, by his personal representatives, provided that the contract is subsisting and enforceable against his heir or devisee, see, Wolst. Conv. Acts, Death of testator before contract completed. Title

(hereinafter called the Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part :

Recital of Agreement for sale by deceased Vendor,

WHEREAS X. Y., deceased, being at his death seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, shortly before his death agreed to sell the same for a like estate to the Purchaser at the price of £—, and thereupon the sum of £— was paid by the Purchaser to the said X. Y. by way of deposit and in part payment of the said purchase-money, but no further part of the said purchase-money has been paid :

and payment of deposit.

Death of testator, Will and probate.

AND WHEREAS the said X. Y. died on the — day of —, having by his Will dated the — day of — appointed the Vendors to be his executors, who on the — day of — duly proved the same at the — Probate Registry [*or* died intestate on the — day of — and Letters of Administration to his estate and effects were on the — day of — granted out of the — Probate Registry to the Vendors] :

[Variation where intestacy.]

Agreement to give effect to contract.

AND WHEREAS the Vendors, as the personal representatives of the said X. Y., have agreed to give effect to the said agreement upon payment to them by the Purchaser of the balance of the said purchase-money :

Conveyance by Personal Representatives.

NOW THIS INDENTURE WITNESSETH that for the purpose of giving effect to the said agreement and in consideration of the sum of £— paid by way of deposit as aforesaid and of the sum of £— now paid by the Purchaser to the Vendors As the Personal Representatives of the said X. Y. (the payment and receipt in manner aforesaid of which said several sums of £ — and £—, making together the said purchase-money of £—, the Vendors hereby acknowledge), the Vendors, As Personal Representatives of the said X. Y., deceased, hereby convey unto the Purchaser

ALL, &c. (*see Forms in Sect. II., sup.*)

Habendum.

To hold unto and To the use of the Purchaser in fee simple.  
(*Add acknowledgment for production of documents, Form No. 6, Sect. III., also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

made by his personal representatives.

9th ed., 27, for notes on this section. If the vendor died after 1897 title will be made by his personal representatives under the L. T. Act, 1897, Part I.

## No. V.

CONVEYANCE of FREEHOLDS to give effect to a CONTRACT  
for SALE where the PURCHASER has DIED since 1897 and  
BEFORE completion (r).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. Parties.  
(hereinafter called the Vendor), of the one part, and C. D., of,  
&c., and E. F., of, &c. (*personal representatives of Purchaser*)  
(hereinafter called the Purchasers), of the other part (*Recite  
seisin of Vendor, and agreement by him to sell to X. Y., and payment  
of deposit; Recite also Will or intestacy of X. Y., and probate by  
Purchasers or grant of administration to them, as in last Precedent*):

AND WHEREAS the Purchasers, as the personal representatives Agreement to  
of the said X. Y., have requested the Vendor to give effect to the carry contract  
said agreement, and he has agreed so to do on payment to him into effect.  
of the balance of the said purchase-money :

NOW THIS INDENTURE WITNESSETH that for the Conveyance  
purpose of giving effect to the said agreement and in considera- to personal  
tion of the sum of £—— paid by way of deposit as aforesaid represen-  
and of the sum of £—— now paid by the Purchasers out of tatives.  
the estate of the said X. Y. to the Vendor (the receipt of which  
said sums of £—— and £——, making together the said  
purchase-money of £——, the Vendor hereby acknowledges),  
the Vendor, As Beneficial Owner, hereby conveys unto the  
Purchasers

ALL, &c. (*see Forms in Sect. II., sup.*),

To HOLD unto and To THE USE of the Purchasers in fee simple, Habendum.  
as part of the real estate of the said X. Y., deceased, and to be  
dealt with by them in like manner, as if the purchase of the said  
hereditaments had been completed in the lifetime of the said X. Y.

(*Acknowledgment as to documents, Form No. 6, Sect. III.,  
also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

(r) As real estate now vests, like chattels real, in the personal representa-  
tives under the L. T. Act, 1897, the legal estate ought to be conveyed  
to them. When all the debts, &c., are paid, it will be their duty to convey  
the property to the devisee or heir-at-law or to the uses of the will. This  
Precedent would properly come under another Group, but has been placed  
here for comparison with the last.

## No. VI.

BARGAIN *and* SALE *of* COPYHOLDS *by* EXECUTORS (*n*).

Parties.

THIS INDENTURE (*x*), made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*executors*) (hereinafter called the Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part :

Recital of Will devising copyholds to such uses as executors appoint for purposes of a sale.

Death of testator and probate.

Agreement for sale.

WHEREAS X. Y., deceased, being at his death (*continue Form No. 26, Sect. I., sup.*) :

AND WHEREAS the said testator died on the — day of — without having revoked or altered his said Will [so far as regards his copyhold hereditaments], which was on the — day of — duly proved at the — Probate Registry by the Vendors :

AND WHEREAS the Vendors, as such executors as aforesaid, have agreed to sell to the Purchaser the hereditaments hereinafter described free from incumbrances for an estate of inheritance according to the custom of the said Manor at the price of £— :

Bargain and sale of copyholds.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Vendors as such executors as aforesaid (the receipt of which sum the Vendors hereby acknowledge), the Vendors, As Personal Representatives of the said X. Y., deceased, and in exercise of the power conferred on them by the recited Will and of all other powers, hereby bargain, sell, and appoint unto the Purchaser

Parcels.

ALL, &c. (*Form No. 17, Sect. II., sup.*), to which the said X. Y. was admitted on the — day of —,

Habendum.

To HOLD unto and To THE USE of the Purchaser, his heirs and assigns, at the will of the lord according to the custom of the said Manor by and under the rents, suits and services therefor due and of right accustomed.

(*Add acknowledgment for production of documents, Form No. 6, Sect. III., also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

(*w*) See note to Form No. 26, Sect. I. In the case taken in the text the executors can make title by bargain and sale without being admitted. For a form of admittance of the purchaser in order to perfect his title, see next Precedent.

(*x*) This deed is the principal instrument for the purpose of the Stamp

## No. VII.

ADMISSION *of* PURCHASER *under a* BARGAIN *and* SALE.

MANOR of —, in the ) The — day of —, 19— :  
 County of —. ) WHEREAS by an Indenture dated Recital of  
 the — day of —, 19—, and made between A. B. of, &c., and bargain and  
 C. D. of, &c., of the one part, and E. F. of, &c., of the other part, sale to Pur-  
 the said A. B. and C. D. have, in pursuance of a power for that chaser.  
 purpose contained in the Will of X. Y., late a copyhold tenant of  
 the Manor (which Will is dated the — day of — and has been  
 duly entered on the court rolls (*y*)), bargained, sold, and appointed  
 the hereditaments hereinafter described To THE USE of the said  
 E. F. and his heirs at the will of the lord according to the  
 custom of the Manor by and under the rents, suits and services  
 therefor due and of right accustomed :

NOW BE IT REMEMBERED, that on the day and year first Admission of  
 above written the said E. F. came before —, steward of this Purchaser.  
 Manor, and prayed to be admitted tenant to the said heredita-  
 ments appointed to him by the said Indenture as aforesaid  
 (namely) :—

ALL, &c. (*Forms No. 17, Sect. II., sup.*),

To WHICH said hereditaments the lord of the Manor by the  
 said steward granted seisin thereof by the rod,

To HOLD the same unto the said E. F. and his heirs at the Habendum.  
 will of the lord according to the custom of this Manor by  
 and under the rents, fines, suits and services therefor due and of  
 right accustomed,

AND so (saving the right of the lord), the said E. F. is  
 admitted tenant of the said hereditaments, and pays to the lord  
 on such his admittance a fine [certain] of £— and his fealty  
 is respited.

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Acts; if it also comprises freeholds an apportionment of the stamp duty  
 will be unnecessary.

(*y*) Wills Act, 1837, s. 5.

## No. VIII.

## ASSIGNMENT of LEASEHOLDS by PERSONAL REPRESENTATIVES (z).

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*personal representatives*) (hereinafter called the Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part :

Recital of Lease. WHEREAS by an Indenture (*Form No. 28, Sect. I., sup.*) :

Recital of Will. AND WHEREAS the said X. Y. died (*Form No. 32, Sect. I., sup., or if X. Y. died intestate*), [intestate on the — day of —, and Letters of Administration to his personal estate were on the — day of — granted out of the — Probate Registry to the Vendors] :

Agreement for sale. AND WHEREAS the Vendors, as the personal representatives of the said X. Y., have agreed to sell to the Purchaser free from incumbrances the premises comprised in the recited Lease for the residue of the term thereby granted at the price of £ — :

NOW THIS INDENTURE WITNESSETH as follows :—

Assignment by personal representatives. 1. IN pursuance of the said agreement and in consideration of the sum of £ — now paid by the Purchaser to the Vendors as personal representatives of the said X. Y. (the receipt of which sum the Vendors hereby acknowledge), the Vendors, As Personal Representatives of the said X. Y., deceased, hereby assign unto the Purchaser

Habendum. ALL the premises comprised in and demised by the recited Lease, TO HOLD unto the Purchaser for the residue of the term granted by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the said Lease reserved and contained and henceforth on the part of the lessee to be paid, observed, and performed.

Covenant by Purchaser to pay rent, &c. 2. THE Purchaser hereby covenants (*Form No. 5, Sect. III., sup., adding after the word "effects" and the estate and effects of the said X. Y., deceased*).

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(z) If necessary, title can be made to leaseholds by one of several executors, but as a rule all the executors join.

3. (*Acknowledgment for production of documents, Form No. 6, Documents, Sect. III., also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

# GROUP H.—CONVEYANCES ON SALES BY MARRIED WOMEN.

## NO. I.

CONVEYANCE *by a HUSBAND and WIFE married before the 1st January, 1883, of FREEHOLDS of the WIFE ACQUIRED by her BEFORE that DATE (a).*

THIS INDENTURE, &c., BETWEEN A. B., of, &c., and E. B., his wife (hereinafter called the Vendors), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Parties.

WHEREAS the said A. B. and E. B. (then E. H., spinster) were married on the — day of —, 18—, and no settlement or agreement for a settlement was made on their marriage or has been since made affecting real estate to be afterwards acquired by the said E. B. :

Recital of marriage and acquisition of property by wife.

AND WHEREAS G. H., being at his death seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, duly made his Will dated the — day of — and thereby devised all his real and personal estate to his daughter, the said E. B. :

Recite Will devising hereditaments to wife.

AND WHEREAS the said G. H. died on the — day of —, 18—, without having revoked or altered his said Will, which was on the — day of —, 18—, duly proved at the — Probate Registry by the executors therein named (b) :

Death and probate.

(a) This Precedent is intended for use in cases to which the M. W. P. Act, 1882, does not apply, and where the married woman is not entitled for her separate use. The deed must be acknowledged under the Fines and Recoveries Act, 1833, as amended by the Conv. Act, 1882, s. 7. Local custom does not alter the position : *Johnson v. Clark*, 1908, 1 Ch. 303 ; 77 L. J. Ch. 127.

(b) If the property was acquired by the wife before the marriage, the following recital may be substituted for the first three in the text :

WHEREAS at the date of her marriage with the said A. B., which took place on the — day of —, 18—, the said E. B.

Agreement  
for sale.

AND WHEREAS the Vendors have agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £—:

Conveyance  
by husband  
and wife.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge), the said E. B., As Beneficial Owner (*c*), with the concurrence of her husband, the said A. B., hereby conveys and disposes of and the said A. B., As Beneficial Owner (*c*), hereby conveys and confirms unto the Purchaser

Parcels.

ALL THOSE, &c. (*d*) (*see Forms in Sect. II., sup.*),

Habendum.

To HOLD unto and To THE USE of the Purchaser in fee simple.

(*Add acknowledgment for production of documents and undertaking for safe custody, Form No. 6, Sect. III., also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

(*Acknowledgment by E. B., Form No. 10, Sect. III., sup.*)

(then E. H., spinster) was seised of the hereditaments hereinafter described in fee simple in possession free from incumbrances, and no settlement or agreement for a settlement was then made or has been since made affecting the said hereditaments.

Covenants for  
title by hus-  
band and wife  
as beneficial  
owners.

(*c*) These words imply a covenant for title on the part of the wife that notwithstanding anything by her, &c., she has, &c., and binds her present and future separate estate which she is not restrained from anticipating, whether she has any at the date of the covenant or not (*M. W. P. Act, 1893, s. 1*), and also a covenant for title by the husband that notwithstanding anything by him, &c., he has, &c., and also a covenant by him in the same terms as the implied covenant of the wife, namely, "That notwithstanding anything by her, &c., she has," &c.: *Conv. Act, 1881, s. 7 (3)*; and see *Wolst. Conv. Acts, 9th ed., 43*, and note (*j*) to next Precedent.

Variations in  
case of copy-  
holds and  
leaseholds.

(*d*) This Precedent may be readily adapted to a covenant to surrender copyholds or an assignment of leaseholds. See and compare *Prece. IV., Group F, p. 432, sup.* In the case of leaseholds the assignment need not be acknowledged. For a form of surrender of copyholds by a woman married before 1883, see *Prece. V. of this Group, p. 450, inf.*

## No. II.

CONVEYANCE *of* FREEHOLDS *by* a MARRIED WOMAN  
*married* AFTER 1882 (*e*). VARIATIONS *where she married*  
 BEFORE 1882 *and the property VESTED in her* AFTER  
 1882 (*f*).

THIS INDENTURE (*g*), made, &c., BETWEEN E. B., the wife of Parties.  
 A. B., of, &c. (hereinafter called the Vendor), of the one part,  
 and C. D., of, &c. (hereinafter called the Purchaser), of the  
 other part:

WHEREAS the Vendor (then E. H., spinster) intermarried with Recital of  
 the said A. B. on the — day of —, 189— [18— (*h*)], Vendor.  
 and no settlement or agreement for a settlement was then or Variation  
 has since been made affecting the hereditaments hereinafter where property  
 described: acquired after  
 marriage.

AND WHEREAS the Vendor was at the date of her said marriage Recital of  
 and still is seised in fee simple in possession free from seisin of  
 incumbrances of the hereditaments hereinafter described: Vendor.

[AND WHEREAS X. Y., deceased, being at his death seised in [Variation.  
 fee simple in possession free from incumbrances of the heredita- Recital of  
 ments hereinafter described, died on the — day of —, devolution of  
 intestate and leaving the Vendor his heiress-at-law (*i*): property to  
 Vendor under  
 an intestacy  
 after  
 marriage.]

AND WHEREAS the Vendor has agreed to sell to the Purchaser Agreement  
 the hereditaments hereinafter described and the fee simple thereof to sell.  
 in possession, free from incumbrances at the price of £—:

NOW THIS INDENTURE WITNESSETH that in pursuance Conveyance by  
 of the said agreement and in consideration of the sum of £— married  
 woman.

(*e*) See M. W. P. Act, 1882, s. 2.

(*f*) See M. W. P. Act, 1882, s. 5; *Reid v. R.* (1886), 31 Ch. D. 402; 55 L. J. Ch. 294; *Re Bacon*, 1907, 1 Ch. 475; 76 L. J. Ch. 213.

(*g*) For a form of conveyance by a married woman tenant for life, see Prec. XI., Group E, p. 413, *sup*.

(*h*) The words in square brackets throughout this Precedent will only be required where the vendor was married before 1883 and the property vested in her after 1882. Except to some extent on behalf of an infant, a husband can no longer make a valid settlement of his wife's personalty or reversionary interests: M. W. P. Act, 1907, s. 2.

(*i*) If X. Y. died after 1897 his real estate would vest, under the L. T. Act, 1897, Part I., in his personal representative, and the grant of letters of administration and assent or conveyance by him must be recited.

now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner (*j*), hereby conveys unto the Purchaser

Parcels.

ALL THAT, &c. (*k*).

Habendum.

To HOLD UNTO and To THE USE of the Purchaser in fee simple.

(*Add acknowledgment and undertaking as to documents, Form No. 6, Sect. III., also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

### No. III.

#### CONVEYANCE of FREEHOLDS by a MARRIED WOMAN entitled for her SEPARATE USE and by her TRUSTEE by her DIRECTION.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Trustee), of the 1st part, C. D., the wife of O. D., of, &c. (hereinafter called the Vendor), of the 2nd part, and E. F., of, &c. (hereinafter called the Purchaser), of the 3rd part:

Recital of seisin.

WHEREAS X. Y., &c., deceased, being at his death seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, duly made his Will dated, &c., and

Contract by married woman binds her separate property, present and future.

(*j*) Under this Precedent the vendor conveying as beneficial owner will be liable to the statutory covenants for title, in respect of her separate property. The M. W. P. Act, 1893, s. 1, provides that every contract by a married woman after the 5th December, 1893, shall be deemed to be entered into by her with respect to and so as to bind her separate property, whether she is or is not possessed of any separate property at the date of such contract (see *Paquin v. Beauderke*, 1906, A. C. 148; 75 L. J. K. B. 395), and shall bind all separate property which she may at that time or thereafter be possessed of, and shall also be enforceable by process of law against all property which she may thereafter whilst discoverd be possessed of. The above enactment does not apply to separate property which the wife is restrained from anticipating; but see *ib.*, s. 2, as to the removal of the restraint by the Court in proceedings instituted by or on behalf of a married woman.

Variations for copyholds and leaseholds.

(*k*) The above Precedent may be readily adapted to a covenant to surrender copyholds or an assignment of leaseholds. See Precs. V. (Copyholds) and VIII. (Leaseholds), Group A, pp. 328, 331, *sup.* For a form of surrender of copyholds by a woman married after 1882, see Prec. VI. of this Group, p. 451, *inf.*

thereby devised all his real estate unto the Trustee In trust for his daughter the Vendor for her separate use (*death of testator before 1883 and probate of his Will*):

Devise to Trustee for separate use of Vendor.

AND WHEREAS the Vendor has agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £—, and has requested the Trustee to convey the same in manner hereinafter appearing :

Agreement for sale.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Trustee, As Trustee according to his estate, and by the direction of the Vendor, hereby conveys and the Vendor As Beneficial Owner hereby conveys and confirms unto the Purchaser

Consideration.

Conveyance.

ALL THOSE, &c. (*see Forms, in Sect. II., sup.*)

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple.

Habendum.

(*Acknowledgment as to documents if required, Form No. 6, Sect. III., sup. If the documents are in the Trustee's custody he will give the acknowledgment, but if, as is probably the case, they are in the custody of the Vendor, she will give the acknowledgment and undertaking.*)

IN WITNESS, &c.

#### No. IV.

CONVEYANCE of FREEHOLDS by a MARRIED WOMAN to her HUSBAND, the PROPERTY having been acquired and the MARRIAGE having taken place BEFORE 1883 (l). VARIATIONS where the conveyance is VOLUNTARY.

THIS INDENTURE, made, &c., BETWEEN C. B., the wife of A. B., of, &c., of the one part, and the said A. B. of the other part :

Parties.

WHEREAS the said A. B. married the said C. B. on the — day of —, 18—, and the said C. B. was at the date of her

Recital of seisin.

(l) By the Conv. Act, 1881, s. 50, a wife can convey freeholds directly to her husband without the intervention of a grantee to uses, and can grant him a lease derived out of freeholds or assign chattels to him, see, *Ramsay v. Margrett*, 1894, 2 Q. B. 18; 63 L. J. Q. B. 513; *Re Marlborough*, 1894, 2 Ch. 133; 63 L. J. Ch. 471.

marriage and still is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described :

Agreement to convey.

AND WHEREAS the said C. B. has agreed to sell the said hereditaments to the said A. B. at the price of £——[*or is desirous of giving the said hereditaments to the said A. B.*] :

Wife conveys to husband.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the said A. B. to the said C. B. as her separate property (*the receipt, &c.*) [*or in consideration of her love and affection for her said husband*], the said C. B., As Beneficial Owner (*m*) [*or As Settlor*], with the concurrence of the said A. B. (testified by his execution hereof), hereby conveys and disposes of unto the the said A. B.

Parce's.

ALL, &c. (*see Forms in Sect. II., sup.*).

Habendum.

To HOLD unto and To THE USE of the said A. B. in fee simple.

IN WITNESS, &c.

(*Acknowledgment by C. B., Form No. 10, Sect. III., sup.*)

#### No. V.

SURRENDER *out of COURT of COPYHOLDS, where the VENDOR is a MARRIED WOMAN and the Marriage has taken place BEFORE 1883.*

The MANOR of ——, ) BE IT REMEMBERED, that on  
in the County of —— } the —— day of ——, A. B., of, &c.,  
and E. B., his wife (*Vendors*), came before L. M., &c., steward of  
the said Manor, out of court, and in consideration of the sum of

Variation  
where full  
covenants for  
title given in  
a voluntary  
conveyance.

(*m*) As full covenants for title are only implied by s. 7 of the Conv. Act, 1881, where there is consideration, if it is intended in a voluntary conveyance that the grantor shall give such covenants the following words should be added :—“ PROVIDED ALWAYS, that the statutory covenants which would have been implied in these presents if made for valuable consideration in money by reason of the said A. B. being expressed to convey As Beneficial Owner shall be deemed to be incorporated in these presents.” This proviso should not be used without fully explaining its meaning to the grantor. As to Voluntary Conveyances, see Dissertation in Vol. II. on Voluntary Settlements; also Fin. (1909-10) Act, 1910, s. 73, as to the stamp.

£—— to them paid by C. D., of, &c. (*Purchaser*), surrendered into the hands of the lord of this Manor by the hands and acceptance of his said steward according to the custom of the Manor (the said E. B. having been first examined by the said steward separately and apart from her said husband, and freely and voluntarily consenting thereto (*n*)),

Surrender of copyholds by husband and wife.

ALL, &c. (*see Form No. 17, Sect. II., sup.*), [to which said hereditaments the said E. B., (then E. H., spinster) was admitted tenant at a court holden for the Manor on the —— day of ——,]

Parcels.

To the use of the said C. D. and his heirs, at the will of the lord, according to the custom of the said Manor, by and under the rents, fines, heriots, suits and services therefor due and of right accustomed.

This Surrender was taken and accepted the

day and year first above written by me,

(Signed) L. M. (*Steward*),  
Steward of the Manor.

## No. VI.

### SURRENDER of COPYHOLDS to a PURCHASER by a WOMAN MARRIED after 1882 (*o*).

MANOR of ) BE IT REMEMBERED, that on the —— day  
—— of ——, 19—, E. B., the wife of A. B., of, &c., to whom she was married after the 31st day of December, 1882, came, &c. (*same as Precedent VI., Group A, p. 329, sup., substituting "her" for "his" and "him"*).

(*n*) A surrender of copyholds by a married woman (not being her separate property) is void unless she is separately examined by the lord or his steward as to her voluntary consent: *Serv.*, 7th ed., 90. She may now surrender copyholds held as trustee as if she were unmarried: *M. W. P. Act*, 1907, s. 1, though it will be safer for the husband to concur to pass any legal interest vested in him.

(*o*) As the married woman is entitled for her separate use under the *M. W. P. Act*, 1882, she can surrender without the concurrence of her husband and without any separate examination.

GROUP J.—CONVEYANCES ON SALES ON BEHALF OF LUNATICS,  
BANKRUPTS, AND CONVICTS.

No. I.

CONVEYANCE *of* FREEHOLDS *of* a LUNATIC *by* the COMMITTEE  
*of* his ESTATE (*p*).

Parties. THIS INDENTURE, made, &c., BETWEEN A. B. (*q*), of, &c., a person of unsound mind so found by inquisition (hereinafter called the Vendor), acting by C. D., of, &c. (hereinafter called the Committee), the Committee of his estate, of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part :

Inquisition under commission in lunacy, WHEREAS by an inquisition taken before —, Esqre., one of the Masters in Lunacy, on the — day of —, under a Commission in Lunacy duly issued for that purpose, the Vendor was found to be a person of unsound mind :

and appointment of Committee. AND WHEREAS by an Order in Lunacy made on the — day of —, In the matter of A. B., a person of unsound mind, the Committee was appointed to be the committee of the person and estate of the Vendor :

Seisin of lunatic. AND WHEREAS the Vendor was at the date of the said inquisition and still is seised in fee simple free from incumbrances of the hereditaments hereinafter described :

Agreement for sale. AND WHEREAS the Committee as such committee as aforesaid has agreed on behalf of the Vendor to sell to the Purchaser the said hereditaments and the fee simple thereof in possession free from incumbrances at the price of £—, subject to the approbation of the Judge in Lunacy :

Order in Lunacy confirming same. AND WHEREAS by a further Order in Lunacy made on the — day of —, 19—, in the matter aforesaid it was ordered that the said Conditional Agreement should be carried into effect and that the said purchase-money of £— should be paid to the Committee as such committee as aforesaid (*r*), and that it

(*p*) See Dissertation, p. 25.

(*q*) See Prec. XIV., Group E, p. 418, *sup.*, for a form of conveyance where the lunatic is a tenant for life.

Sale by committee of a lunatic.

(*r*) See Rules in Lunacy, 1892 (W. N., 1892, Rules and Orders, p. 7), r. 124. The purchase-money must be paid either into Court or as the order

should be referred to the Masters in Lunacy to settle and approve of a proper conveyance of the said hereditaments to the Purchaser :

AND WHEREAS —, one of the Masters in Lunacy, has settled and approved of these presents as a proper conveyance, pursuant to the last-mentioned Order as testified by the seal of the said Master affixed in the margin hereof :

Approval of conveyance by Master.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and the said Order of 19— and in consideration of the sum of £—— now paid by the Purchaser to the Committee as such committee as aforesaid (the receipt of which sum the Committee hereby acknowledges), the Vendor, As Beneficial Owner (s), acting by the Committee as such committee as aforesaid, hereby conveys unto the Purchaser

Conveyance by committee.

ALL, &c. (*see Forms in Sect. II., sup.*),

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple.

(*Add acknowledgment for production of documents, Form No. 6, Sect. III. ; also Form No. 11, Sect. III., if required.*)

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first above written. (*The deed should be executed by the Committee in the name of the lunatic, thus, "A. B., by C. D., his Committee," and the attestation clause should be signed, sealed, and delivered by the within-named A. B. by C. D., his Committee, in the presence of, &c. (t).)*)

Form of signature and attestation.

directs. The Court will authorise a sale in consideration of a perpetual rent-charge : *Re Ware*, 1892, 1 Ch. 344 ; 61 L. J. Ch. 279 ; but not in consideration of shares in a company : *Re A. B.* (1899), W. N. 233. As to the sale of the undivided share of a lunatic to his co-owners, see *Re Weld* (1885), 28 Ch. D. 514 ; *Re Gaitskill* (1889), 40 Ch. D. 416 ; 58 L. J. Ch. 262.

(s) S. 124 of the Lunacy Act, 1890, enables the committee to enter into usual and proper covenants on his behalf on a sale including covenants for title : *Re Ray*, 1896, 1 Ch. 468 ; 65 L. J. Ch. 316. If the committee conveyed simply As Committee, only the covenant against incumbrances would be implied, see Conv. Act, 1881, s. 7 (F).

Covenants for title.

(t) See *Lawrie v. Lees* (1881), 7 A. C. 19 ; 51 L. J. Ch. 209, as to what is a sufficient execution by a committee. A person found lunatic by inquisition cannot execute a valid deed during a lucid interval so long as the inquisition continues in force : *Re Walker*, 1905, 1 Ch. 160 ; 74 L. J. Ch. 86.

## No. II.

CONVEYANCE of FREEHOLDS of a LUNATIC by the COMMITTEE  
of his ESTATE. where the PURCHASE is made under COM-  
PULSORY POWERS (a).

|   |   |
|---|---|
| Parties,  | THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (herein-<br>after called the Committee) (x), the committee of the estate of<br>C. D., of, &c., a person of unsound mind so found by inquisition,<br>of the one part, and the — Council (hereinafter called the<br>Council) of the other part.             |
| Recitals.   | (Recite inquisition, appointment of Committee and seisin of<br>lunatic as in last Precedent, substituting the said C. D. for “the<br>Vendor.”)  |
| Power of<br>council to<br>acquire the<br>land.  | AND WHEREAS the Council require and are by the — Act,<br>19— (the special Act), and the Acts incorporated therewith<br>(including the Land Clauses Consolidation Act, 1845), authorised<br>to acquire the hereditaments hereinafter described for the<br>purposes of the said Act of 19— (the special Act): |
| Agreement for<br>sale. Order in<br>Lunacy con-<br>firming sale.<br>Approval of<br>conveyance by<br>Master in<br>Lunacy. | AND WHEREAS, &c. (as in last Precedent, saying “Council” for<br>“Purchaser,” and omitting in the recital of the Order the direction<br>as to payment of the purchase-money (y)).  |
| Payment into<br>Court.  | AND WHEREAS on the — day of —, 19—, the Council paid<br>the said purchase-money of £—— into Court to the credit of<br>——, as the Committee hereby acknowledges (z).   |
| Conveyance by<br>committee.   | NOW THIS INDENTURE WITNESSETH that in pursuance<br>of the said agreement and the said Order of 19— and in con-<br>sideration of the sum of £—— paid into Court as aforesaid, the<br>Committee, As Committee (a) of the said C. D., hereby conveys<br>unto the Council                                       |

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(a) See L. C. C. Act, 1845, s. 7.

(x) The committee in this case should convey in his own name, see, *Re Tugwell* (1884), 27 Ch. D. 309; 53 L. J. Ch. 1006.

(y) The sanction of the Judge in Lunacy should be obtained: *Re Taylor* (1849), 1 Mac. & G. 210. Instead of paying the purchase-money into Court under L. C. C. Act, 1845, s. 69, it may, under an order in lunacy, be paid to the credit of the lunacy matter: *Re Milnes* (1875), 1 Ch. D. 28; *Re Buckingham* (1876), 2 Ch. D. 690.

(z) The usual certificate of payment into Court should be obtained by the council.

(a) See Conv. Act, 1881, s. 7 (f); note (s) to last page.

ALL, &c. (*see Forms in Sect. II., sup.*).

Parcels.

To HOLD unto and To THE USE of Council and their assigns in fee simple. (*Add Formus Nos. 6 and 11, Sect. III., if required.*) Habendum

IN WITNESS, &c.:

A. B., Committee of C. D. (*b*).

### No. III.

CONVEYANCE *on sale of* FREEHOLDS *by a* RECEIVER *appointed under the LUNACY ACT, 1890 (c), to exercise the powers of a COMMITTEE of the estate of a LUNATIC not so found by* INQUISITION.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., a person of unsound mind, but not so found by inquisition (hereinafter called the Vendor), acting by C. D., of, &c. (hereinafter called the Receiver), the person appointed to exercise the powers of a committee of his estate, of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part :

Parties.

WHEREAS the Vendor is a person lawfully detained as a lunatic but not so found by inquisition within the terms of section one hundred and sixteen of the Lunacy Act, 1890 :

Recital that Vendor is lunatic not so found by inquisition.

AND WHEREAS by an Order in Lunacy made on the — day of —, In the matter of A. B., a person of unsound mind not so found by inquisition, the Receiver was appointed to exercise the powers of a committee of the estate of the Vendor :

Appointment of person to exercise the powers of committee.

AND WHEREAS the Vendor was at the date of the said Order and still is seised in fee simple free from incumbrances of the hereditaments hereinafter described (*other recitals as in Precedent I., p. 452, substituting "the Receiver" for "the Committee," and omitting the words "as such committee, as aforesaid"*).

Seisin of lunatic.

Other recitals.

NOW THIS INDENTURE WITNESSETH that in pursuance of the last mentioned Order and in consideration of the sum of

Conveyance by person appointed to

(b) In this case the committee executes in his own name. As to lunatics not so found, see Lunacy Act, 1908, s. 1.

(c) See ss. 116, 120; Lunacy Act, 1908, s. 1. The jurisdiction in lunacy determines on the death of the lunatic: *Re Hunt*, 1906, 2 Ch. 295; 75 L. J. Ch. 801.

exercise powers of committee. £—— now paid by the Purchaser to the Receiver (*the receipt, &c.*) the Vendor, As Beneficial Owner (*d*), acting by the Receiver, hereby conveys unto the Purchaser,

Parcels. ALL, &c. (*see Forms in Sect. II., sup.*),

Habendum. To HOLD unto and To THE USE of the Purchaser in fee simple. (*Add Forms Nos. 6 and 11, Sect. III., if required.*)

IN WITNESS, &c.

(*The deed should be executed by the Receiver in the name of the lunatic thus, "A. B. by C. D., the person appointed to exercise the powers of a committee of his estate." And the attestation clause should be "signed, sealed, and delivered by the within-named A. B. by C. D., the person appointed to exercise the powers of a committee of his estate" in the presence of, &c.*)

#### No. IV.

#### CONVEYANCE of FREEHOLDS by the TRUSTEE of a BANKRUPT (*c*).

Parties. THIS INDENTURE, made, &c., BETWEEN X. Y., of, &c. (*trustee*) (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

(*d*) See fourth note to Prec. I. of this Group, p. 453, *sup.*

Bankruptcy Act. Appointment of a trustee or committee of inspection. (*c*) The Bankruptcy Act, 1883 (ss. 21, 22), provides that when a debtor is adjudged bankrupt, the creditors may by ordinary resolution appoint some fit person to fill the office of trustee of his property, or may resolve to leave the appointment to the committee of inspection, and may at their first or any subsequent meeting appoint from the creditors a committee of inspection, consisting of not more than five nor less than three persons to superintend the administration of the bankrupt's property by the trustee.

Property divisible amongst creditors of bankrupt. S. H declares that the property of the bankrupt divisible amongst the creditors shall comprise all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and the capacity to exercise and take proceedings for exercising such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of the bankruptcy or before his discharge, except the right of nomination to a vacant ecclesiastical benefice; and all goods being at the commencement of the bankruptcy in the possession, order, or disposition of the bankrupt in his trade or business by the consent and permission of the true owner under such circumstances that he is the reputed owner, provided that things in action, other than debts due or growing due to the

WHEREAS at the date of his bankruptcy hereinafter mentioned A. B., of, &c., was seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described :

Recitals :  
Seisin of  
bankrupt.

bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of this section. Property held by the bankrupt on trust for any other person and certain effects to the value of £20 are excepted. A trustee in bankruptcy cannot exercise any general power of the bankrupt by deed or will after his death : *Nichols to Nissey* (1885), 29 Ch. D. 1005; 55 L. J. Ch. 146. Nor can the trustee release a limited power of appointment by deed or will for the benefit of the bankrupt's estate : *Re Rose*, 1904, 2 Ch. 348; 1905, 1 Ch. 94; 73 L. J. Ch. 726; 74 *ib.*, 22, where the C. A. expressed no opinion on the point.

It seems that an exercise of a testamentary power does not operate for the benefit of the creditors of a bankrupt so as to give the trustee in bankruptcy the right to the appointed property, but such appointment may enure for the benefit of creditors whose debts were incurred since the date of the bankruptcy : *Jenney v. Andrews* (1822), 6 Madd. 264; *Re Guedalla*, 1905, 2 Ch. 331; 75 L. J. Ch. 52. See also as to powers vested in a bankrupt, Wace on Bankruptcy, 215 *et seq.*

Effect of  
exercise of  
testamentary  
power.

Until a trustee is appointed, the official receiver is the trustee for the purposes of the Act, and may therefore sell : s. 9; *Turquand v. Board of Trade* (1886), 11 A. C. 286; 55 L. J. Q. B. 417; or disclaim onerous property : *Re Cohen*, 1905, 2 K. B. 704; 74 L. J. K. B. 864. On the appointment of a trustee, the property forthwith vests in him : s. 54.

Official  
receiver.

The creditors may, if they think fit, appoint more persons than one to the office of trustee : s. 84; and any vacancy in the office of trustee may be filled up by the creditors in general meeting, and during any vacancy the official receiver is empowered to act as trustee : s. 87 (4); and see Bankr. Rules, 1886, r. 336 (4).

Trustee in  
bankruptcy.

S. 56 empowers the trustee to sell the property of the bankrupt by public auction or private contract, to exercise any powers the capacity to exercise which is vested in the trustee under the Act, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect its provisions; and to deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with the same; and declares that ss. 56 to 73 (both inclusive) of the Fines and Recoveries Act, 1833, shall extend to proceedings in bankruptcy under the Act.

Powers of  
trustee as to  
sales, and  
as to bank-  
rupt's estate  
tail.

As to copyhold or customary property, or any like property passing by surrender or admittance, s. 50 (4) empowers the trustee, without admittance, to deal with the same as if it had been capable of being and had been duly surrendered or otherwise conveyed to such uses as the trustee might appoint, and any appointee of the trustee is to be admitted accordingly. It also provides (sub-s. 3) that when any part of the property of the bankrupt consists of property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer it to the same

As to copy-  
holds.

As to choses in  
action.

Order of  
adjudication.

AND WHEREAS by an Order of the King's Bench Division (*f*) of the High Court of Justice [*or, as the case may be, the County Court of —*], made on the — day of —, the said A. B. was adjudged a bankrupt and the Vendor was upon the issue by the Board of Trade of a certificate dated the — day of — (*g*), on or about the — day of — duly appointed to be the trustee of his estate and effects:

Agreement  
for sale.

AND WHEREAS the Vendor, as such trustee as aforesaid, has agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £—— (*h*).

Conveyance by  
trustee.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and consideration of the sum of £ — extent as the bankrupt might have exercised it if he had not become bankrupt; and that (sub-s. 5) where any such property consists of things in action such things shall be deemed to have been duly assigned to the trustee.

Conveyances  
and contracts  
for value,  
before the date  
of receiving  
order, are  
valid where  
purchaser has  
had no notice  
of act of  
bankruptcy.

Subject to the provisions of ss. 47 and 48, as to the avoidance of voluntary settlements and preferences in certain cases (in respect to which see Wace, 239—253), any payment by a bankrupt to any of his creditors, and any payment or delivery to him, any conveyance or assignment by him for a valuable consideration, and any contract, dealing, or transaction by or with him for valuable consideration are declared to be valid, provided the payment, &c., take place before the date of the receiving order, and the person (other than the debtor) to, by, or with whom the payment, &c., was made, executed or entered into, has not at the time of such payment, &c., notice of any available act of bankruptcy committed by the bankrupt before that time: s. 49.

As to property  
acquired by  
undischarged  
bankrupt.

Personal property (including chattels real) acquired by an undischarged bankrupt after his bankruptcy can be received (*Re Ball*, 1899, 2 Ir. R. 313) and dealt with by him so as to confer a good title on a purchaser for value in good faith until the trustee intervenes: *Cohen v. Mitchell* (1890), 25 Q. B. D. 262; 59 L. J. Q. B. 409; *Re Clayton and Barclay*, 1895, 2 Ch. 212; 64 L. J. Ch. 615; *Hunt v. Fripp*, 1898, 1 Ch. 675; 67 L. J. Ch. 377; *Re Bennett*, 1907, 1 K. B. 149; 76 L. J. K. B. 134; *Re Kent County, &c.*, 1909, 2 Ch. 195; 78 L. J. Ch. 625. This rule does not apply to real estate: *Re New Land Association and Gray*, 1892, 2 Ch. 138; 61 L. J. Ch. 495; *Official Receiver v. Cooke*, 1906, 2 Ch. 661; 75 L. J. Ch. 757.

(*f*) The jurisdiction of the London Court of Bankruptcy has been transferred to the High Court of Justice, and bankruptcy business is, under the General Orders dated 1st January, 1884, assigned to the King's Bench Division until further order.

(*g*) See s. 21 (2) of the Bankruptcy Act, 1883; also *Re Mardon*, 1896, 1 Q. B. 110; 65 L. J. Q. B. 111.

(*h*) This recital may be used whether the sale is by public auction or private contract.

now paid by the Purchaser to the Vendor as such trustee as aforesaid (*the receipt, &c.*), the Vendor, As Trustee (*i*), and in exercise of the power for this purpose conferred on him by the Bankruptcy Act, 1883, hereby conveys unto the Purchaser

ALL, &c. (*see Forms in Sect. II., sup.*).

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple.

Habendum.

(*Add acknowledgment for production of documents, Form No. 6, Sect. III.; also Form No. 11, Sect. III., if required (j).*)

Acknowledgment as to documents.

IN WITNESS, &c.

## No. V.

### CONVEYANCE of FREEHOLDS of a BANKRUPT by the OFFICIAL RECEIVER with the CONCURRENCE of MORTGAGEES.

THIS INDENTURE, made, &c., BETWEEN J. K., of, &c., and M. N., of, &c. (hereinafter called the Mortgagees), of the 1st part. X. Y., of, &c., one of the Official Receivers in Bankruptcy (*k*) (hereinafter called the Receiver), of the 2nd part. and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part :

Parties.

WHEREAS by an Indenture of Mortgage (*Recite mortgage as in Form No. 2, Sect. I., sup., substituting "A. B." for "the Vendor"*):

Recital of mortgage by bankrupt.

AND WHEREAS by an Order of the King's Bench Division of the High Court of Justice made on the — day of — the said A. B. was adjudged a bankrupt and the Receiver was constituted receiver of his property :

Recital of order of adjudication.

AND WHEREAS the Receiver, as such receiver as aforesaid, has agreed to sell to the Purchaser the hereditaments hereinafter

Agreement for sale.

(*i*) The trustee is only bound to give the covenants for title implied by his conveying as trustee, see Wace on Bankruptcy, 277. Sometimes the bankrupt, who cannot be compelled to do so, joins and is expressed to give full covenants for title, but it would seem that, having regard to his financial position, his covenants are valueless.

(*j*) The trustee must give the usual acknowledgment for production, but being a trustee he is probably not bound to give an undertaking for safe custody, see Wace on Bankruptcy, 277.

(*k*) On the making of a receiving order an official receiver is constituted receiver of the debtor's property until the appointment of a trustee, see Bankruptcy Act, 1883, s. 9; see also notes to last Precedent.

described and the fee simple thereof in possession free from incumbrances at the price of £—— :

Agreement by Mortgagees to concur.

AND WHEREAS the principal sum (*continue as in Form No. 2, Sect. I., sup.*) :

Conveyance by Official Receiver and mortgagees.

NOW THIS INDENTURE WITNESSETH (*continue as in Precedent I., Group B, p. 351, sup., substituting "the Receiver" for "the Vendor."* *The Receiver will convey As Trustee and in exercise of the power for this purpose conferred on him by the Bankruptcy Act, 1883).*

IN WITNESS, &c.

## No. VI.

CONVEYANCE *by the TRUSTEE of a BANKRUPT of a FREEHOLD ESTATE to which he was ENTITLED for an ESTATE TAIL in POSSESSION (I).*

Parties.

THIS INDENTURE, made, &c., BETWEEN X. Y., of, &c. (*trustee*) (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Recital of settlement.

WHEREAS by an Indenture of Settlement dated, &c. the hereditaments hereinafter described (with other hereditaments) were limited to the use of E. F. during his life, with remainder to the use of his first and other sons successively according to seniority in tail male with divers remainders over.

AND WHEREAS (*Recite Marriage of E. F., birth of A. B. his eldest son, and death of E. F.*) :

AND WHEREAS (*Recite order of adjudication against A. B., appointment of Trustee, and Agreement for sale as in Precedent IV. of this Group, p. 458, sup.*) :

Conveyance to Purchaser discharged from estate tail and remainders over.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration, &c., the Vendor, As Trustee, and in exercise of the power for this purpose conferred on him by the Bankruptcy Act, 1883, and of all other powers, hereby conveys and disposes of unto the Purchaser

Enrolment in Central Office.

(I) S. 56 (5) of the Bankruptcy Act, 1883, authorises the trustee to deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it, and incorporates ss. 56—73 inclusive of the Fines and Recoveries Act, 1883. The conveyance must accordingly be enrolled in the Central Office within six months.

ALL, &c. (*see Forms in Sect. II., sup.*),

To HOLD unto and To THE USE of the Purchaser in fee simple, discharged from all estates in tail male or in tail of the said A. B. and all estates, rights, interests and powers to take effect after the determination or in defeasance of such estates in tail male or in tail or any of them.

Habendum  
free from  
estate tail.

(*Add acknowledgment as to documents, Form No. 6, Sect. III., also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

## No. VII.

CONVEYANCE *by the TRUSTEE of a BANKRUPT of a FREEHOLD ESTATE to which he was ENTITLED for an ESTATE TAIL in REMAINDER (m) to create a base fee.*

THIS INDENTURE, &c. (*parties, as in last Precedent*) (*Recite creation of estate tail as in last Precedent, omitting the death of E. F., also order of adjudication and appointment of Trustee, as in Precedent IV. of this Group, p. 458, sup.*):

AND WHEREAS the Vendor, as such trustee as aforesaid, has agreed to sell to the Purchaser the hereditaments hereinafter described for an estate in base fee expectant on the death of the said E. F. at the price of £—— :

Agreement for  
sale of a base  
fee.

NOW THIS INDENTURE WITNESSETH (*continue as in last Precedent, but insert between the words “ in fee simple ” and “ discharged ” subject to the life estate therein of the said E. F., but, &c. ; add at the end of the habendum “ to the intent that the same may be hereby converted into a base fee ”*).

Conveyance to  
Purchaser to  
convert estate  
tail into  
base fee.

(*Add acknowledgment as to documents, Form No. 6, Sect. III., also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

(m) See note to last Precedent. The deed must be enrolled. On the death of the tenant for life, if the purchaser cannot arrange with the bankrupt, if discharged, or his trustee for the enlargement of the base fee (F. and R. Act, 1833, ss. 19, 38 and 74), he must, in order to dispose of the fee simple, apply to the court under S. L. Act, 1882, s. 38, for the appointment of trustees of the compound settlement.

Enlargement  
of base fees.

## No. VIII.

CONVEYANCE of COPYHOLDS by the TRUSTEE of a BANKRUPT (*n*).

THIS INDENTURE, &c. (*parties as in Precedent IV., p. 456, of this Group*):

Recital of  
bankrupt's  
title to  
copyholds.

WHEREAS A. B., of, &c., was at the date of his bankruptcy hereinafter mentioned seised of the copyhold hereditaments hereinafter described for an estate of inheritance in possession according to the custom of the Manor of —, in the County of —, subject to the customary rents, suits and services:

AND WHEREAS &c. (*Recite order of adjudication and appointment of X. Y. to be Trustee, as in Precedent IV. of this Group*):

Agreement  
for sale.

AND WHEREAS the Vendor, as such trustee as aforesaid, has agreed to sell to the Purchaser the copyhold hereditaments hereinafter described for a customary estate in fee simple, free from incumbrances at the price of £—:

Trustee  
appoints  
copyholds  
to Purchaser  
in fee.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration, &c., the Vendor, As Trustee, and in exercise of the power for this purpose conferred on him by the Bankruptcy Act, 1883, and of all other powers (if any) him enabling, hereby appoints that

ALL THAT, &c. (*parcels as described in the court rolls*), to all which hereditaments the said A. B. was admitted tenant out of court on the — day of —, shall henceforth remain and be

To the USE of the Purchaser and his heirs, at the will of the lord according to the custom of the said Manor, by and under the rents, fines, heriots, suits and services therefor due and of right accustomed.

(*Add acknowledgment as to documents, Form No. 6, Sect. III., also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

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(*n*) See Bankruptcy Act, 1883, s. 50 (4), and note to Prec. IV. of this Group, p. 457, *sup.* This conveyance operates in place of a surrender and must be entered on the court rolls; the purchaser should then be admitted.

## No. IX.

## ASSIGNMENT of LEASEHOLDS by the TRUSTEE of a BANKRUPT.

THIS INDENTURE, &c. (*parties as in Precedent IV., p. 456, of this Group*) (*Recite Lease to A. B., Form No. 28, Sect. I.; also order of adjudication and appointment of Trustee, as in Precedent IV. of this Group*):

Recite Lease to bankrupt.

AND WHEREAS the Vendor, as such trustee as aforesaid, has agreed to sell to the Purchaser the premises comprised in the recited Lease free from incumbrances for the residue of the term thereby granted at the price of £——:

Agreement by trustee for sale.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said Agreement and in consideration, &c., the Vendor, As Trustee, and in exercise of the power for this purpose conferred on him by the Bankruptcy Act, 1883, hereby assigns unto the Purchaser

Assignment by trustee.

ALL the premises comprised in and demised by the recited Lease,

To HOLD unto the Purchaser for the residue of the term granted by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the said Lease reserved and contained and henceforth on the part of the lessee to be paid, performed, and observed (o).

(*Add acknowledgment as to documents, Form No. 6, Sect. III., also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

---

(o) On the sale of leaseholds by the trustee of a bankrupt, the purchaser cannot be required to enter into a covenant to indemnify him or the bankrupt against the payment of the rent, and the observance of the covenants contained in the lease, such a covenant being unnecessary, as the liability ceases on the assignment. Moreover, it would seem to be a breach of trust on the part of the trustee to stipulate for such a covenant, as it might diminish the value of the lease to the purchaser, and therefore reduce the purchase-money: *Wilkins v. Fry* (1816), 1 Mer. at p. 265; and see Dart, 7th ed., 581. This rule does not apply where an equitable mortgagee calls for an assignment of the lease to himself: *Ex p. Buxton* (1880), 15 Ch. D. 289.

On sale of leaseholds by Trustee of bankrupt, Purchaser is not obliged to indemnify.

## No. X.

RELEASE of an EQUITY OF REDEMPTION to MORTGAGEES by  
the TRUSTEE of a BANKRUPT in consideration of the release  
of part of the Mortgage Debt (p).

|  |   |
|--|---|
| Parties.   | THIS INDENTURE, made, &c., BETWEEN X. Y., of, &c. (hereinafter called the Trustee), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part :  |
| Recite mortgage and bankruptcy proceedings.              | WHEREAS by an Indenture ( <i>Recite mortgage for £5,000 by A. B. to the Mortgagees, as in Form No. 2, Sect. I., sup.</i> ) :<br>AND WHEREAS, &c. ( <i>Order of adjudication and appointment of Trustee, as in Precedent IV. of this Group, p. 458</i> ) :   |
| Proof by Mortgagees of debt and value of their security, | AND WHEREAS the Mortgagees proved in the said bankruptcy for the sum of £5,810, being the amount owing to them for principal, interest, and costs, and in their proof valued their said security at £4,000 :  |
| That Trustee has declined to redeem.                     | AND WHEREAS the Trustee, as such trustee as aforesaid, has elected not to redeem the said security, nor to require it to be realized under the provisions for that purpose contained in the Second Schedule to the Bankruptcy Act, 1883 :   |
| Agreement to release equity of redemption.               | AND WHEREAS it has been agreed between the Trustee and the Mortgagees that the property comprised in the said security shall be conveyed to the Mortgagees free from all right of redemption therein in consideration of the sum of £4,000, part of the said mortgage debt, and that the proof of the Mortgagees in the said bankruptcy shall be reduced by that sum accordingly :  |
| Trustee releases equity of redemption to Mortgagees.     | NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £4,000 part of the said mortgage debt (and from which sum of £4,000 the Mortgagees hereby release the said A. B. and the Trustee), the Trustee, As Trustee, hereby releases and conveys unto the Mortgagees<br>ALL the hereditaments comprised in the recited Mortgage, or which have by any means become subject thereto, |

(p) See Bankruptcy Act, 1883, 2nd Sched., r. 12. Under this rule, if the trustee does not within six months signify his election to exercise the power of redeeming, &c., the equity of redemption will thereupon, without any conveyance, vest in the mortgagee.

The stamp on this deed will be £40, viz., £1 per £100 on £4,000.

TO HOLD unto and TO THE USE of the Mortgagees in fee simple, discharged from all rig of redemption under the recited mortgage.

IN WITNESS, &c.

# No. XI.

ASSIGNMENT *by the TRUSTEE of a BANKRUPT to give effect to an ARRANGEMENT whereby after a LEASE has been assigned several times, each ASSIGNMENT containing a COVENANT by the assignee to INDEMNIFY the assignor against the rent and lessee's covenants, ASSIGNEE No. 1 has become BANKRUPT, and the original LESSEE, who has been called upon to pay the RENT, BUYS from the BANKRUPT'S TRUSTEE the benefit of the COVENANTS entered into by ASSIGNEE No. 2 (q).*

THIS INDENTURE, made, &c., BETWEEN X. Y., of, &c. (hereinafter called the Trustee), of the one part, and A. B., of, &c. (original lessee), of the other part (*Recite Lease, Form No. 28, Sect. I., sup., to A.B., assignment by A. B. to C. D., with covenant by C. D. to indemnify A. B. against rent and lesser's covenants, assignment by C. D. to E. F., with similar covenant by E. F. with C. D., death of E. F. and appointment of executors, and assignment by executors to a man of straw, bankruptcy of C. D., and the appointment of X. Y. to be his trustee, see Prec. IV. of this Group, p. 456*) :

Parties.

Recitals of Lease assignment, and bankruptcy.

AND WHEREAS the rent reserved by the recited Lease having fallen into arrear, the said A. B. was subsequently required by the lessor to pay and did pay the arrears amounting to the sum of £—— :

That lessee had paid rent in arrear to lessor,

AND WHEREAS the said A. B. has carried in a claim against the estate of the said C. D. for the said sum of £——, and also for the further sum of £——, being the estimated amount of the liability of the said A. B. under the covenants contained in the said Lease, making together the sum of £—— :

and had claimed against bankrupt's estate.

AND WHEREAS the Trustee has by way of compromise of the claim of the said A. B. against the estate of the said bankrupt agreed to sell to him the full benefit of the covenants on the part

Agreement for compromise.

(q) See *Re Perkins*, 1898, 2 Ch. 182; 67 L. J. Ch. 454, and notes to Prec. VIII., Group A, p. 331, *sup.*

of the said E. F. contained in the said Indenture of the — day of — (*second assignment*), with the rights and powers hereinafter assigned in consideration of the sum of £— and of the said A. B. executing such release as is hereinafter contained :

NOW THIS INDENTURE WITNESSETH as follows :—

Trustee of  
bankrupt  
assigns to  
lessee benefit  
of covenants  
in assign-  
ment No. 2

1. For the purpose of giving effect to the aforesaid arrangement and in consideration of the sum of £— now paid by the said A. B. to the Trustee (*the receipt, &c.*), and of the release hereinafter contained, the Trustee, As Trustee, hereby assigns unto the said A. B.,

THE full benefit of the covenants by the said E. F. with the said C. D. contained in the recited Indenture of the — day of — (*second assignment*),

TOGETHER with the right to recover and receive from the estate of the said E. F., and to retain for the benefit of the said A. B. all such damages, costs, and other sums of money (if any), and to enforce for the like benefit all such other relief by way of indemnity or otherwise as the said C. D., but for his bankruptcy, or the Trustee or other the trustee for the time being in the said bankruptcy, might have been entitled now or at any time hereafter to recover or to enforce for the benefit of the said C. D. or of his estate for any breach committed or hereafter to be committed of the said covenants or any of them if these presents and the arrangement hereby made had not been executed or made : And the right to bring, prosecute, carry on, compound or release any action or proceeding for any such purpose, and all other rights and powers which the Trustee, as such Trustee as aforesaid, has power to transfer to the said A. B. in connexion with the premises,

To HOLD unto the said A. B. absolutely (*r*).

Release of  
bankrupt's  
estate from  
claim under  
covenants in  
assignment  
No. 1.

2. In consideration of the assignment hereinbefore contained the said A. B. hereby withdraws the said proof for the sum of £— and releases the Trustee, as such Trustee, and the estate of the said bankrupt (other than the asset hereinbefore assigned) from all claims and demands under or in respect of the covenants by the said C. D. with the said A. B. contained in the recited Indenture of the — day of — (*first assignment*).

IN WITNESS, &c.

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(*r*) Notice of the assignment should be given to the executor of E. F.

No. XII.

CONVEYANCE *by the ADMINISTRATOR of a CONVICT of a FREEHOLD ESTATE to which he was ENTITLED at the DATE of his CONVICTION (s).*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*administrator*) (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Parties.

WHEREAS G. H. was convicted of felony at the assizes held at — in the month of — last, and judgment of penal servitude was duly recorded against him by the Court of — :

Recite conviction and judgment of penal servitude.

AND WHEREAS by virtue of the Forfeiture Act, 1870, —, His Majesty's principal Secretary of State for the Home Department (*t*), being the person authorised for that purpose by His Majesty under the Royal Sign Manual, has, by a writing dated the — day of —, committed the custody and management of the property of the said G. H. during His Majesty's pleasure to the Vendor as the administrator thereof :

Appointment of administrator.

AND WHEREAS the said G. H. was at the date of his conviction seized in fee simple in possession free from incumbrances of the hereditaments hereinafter described (*u*) :

Seisin of convict.

AND WHEREAS the Vendor, as such administrator as aforesaid, has agreed to sell (*x*) to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £— :

Agreement for sale.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Vendor as such administrator as aforesaid (the receipt of which sum the Vendor hereby acknowledges), the Vendor, in exercise of the power for this

Conveyance by administrator.

(s) See Forfeiture Act, 1870.

(t) See s. 9. A general authority under the section was given to the Home Secretary by warrant on 15th November, 1870.

(u) A convict can bar an estate tail, as this is not an act of alienation within s. 8 of the Forfeiture Act, 1870, but his administrator has no power to do so: *Re Gaskell and Walters*, 1906, 2 Ch. 1; 75 L. J. Ch. 503.

Estate tail of convict

(x) The property vests in the administrator automatically on his appointment under s. 10. The power of sale is conferred by s. 12.

purpose conferred on him by the Forfeiture Act, 1870, and of all other powers, and As Trustee, hereby conveys unto the Purchaser

Parcels.

ALL THOSE, &c. (*see Forms, Sect. II., sup.*),

Habendum.

TO HOLD unto and TO THE USE of the Purchaser in fee simple.  
(*Add acknowledgment as to documents, Form No. 6, Sect. III., also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

#### GROUP K.—CONVEYANCES ON SALES UNDER ORDERS OF THE COURT.

##### No. I.

#### CONVEYANCE *of* FREEHOLDS *on a* SALE *by* ORDER *of* *the* HIGH COURT *or* COUNTY COURT *in an* ADMINISTRATION ACTION (*y*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*trustees with the legal estate*) (hereinafter called the

Proper parties  
on sale under  
order of Court.

(*y*) On a sale under an order of the Court, all persons having a *legal* interest in the property, whether parties to the action or not, should concur in the conveyance, but the purchaser is not entitled to the concurrence of any persons being parties to the suit, or otherwise bound by the proceedings therein, whose interests are merely equitable: Dart, 7th ed., 1182 *et seq.*

To avoid any questions it is usual to provide in the conditions of sale that the purchaser shall not require the concurrence in the conveyance of persons entitled only to equities, see Special Conditions of Sale by the Court, p. 206, *sup.*

Construction  
of s. 70 of  
Conv. Act,  
1881.

The Conv. Act, 1881, s. 70, provides that an order of the Court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice or service, whether the purchaser has notice of any such want or not. The effect of this s. is that if an order for the sale of land professes to bind the interests of persons who are not parties to the proceedings or to dispense with the concurrence of any interested persons, a purchaser under the order is not bound to inquire as to its regularity in this respect, and has a good title, though it may be irregular: *Re Hall Dare's Contract* (1882), 21 Ch. D. 41; 51 L. J. Ch. 671; *Mostyn v. M.*, 1893, 3 Ch. 376; 62 L. J. Ch. 959; *Re Whitlam*, 84 L. T. 585; (1901), W. N. 86; *Re Harrowby and Paine*

Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part):

WHEREAS X. Y. (*Recite Will devising the property to the Vendors on trust for sale as in Form No. 16, Sect. I., sup., or intestacy of X. Y. and grant of administration to the Vendors (z)*):

Recital of Will and probate.

AND WHEREAS by an Order of the Chancery Division of the High Court of Justice made on the — day of — by the Honourable Mr. Justice — [*or by an Order of the County Court of — made on the — day of — by his Honour Judge —*], in the matter of the estate of X. Y., deceased, — v. —, 19—, Y., No. —, it was (amongst other things) ordered that the real estate of the said testator should be sold, with the approbation of the Judge, and that the money to arise by such sale should be paid into Court to the credit of the said action to an account entitled “Proceeds of sale of real estate”:

Order of Court for sale.

AND WHEREAS in pursuance of the said Order the real estate of the said testator was on the — day of — last put up for sale by public auction in several Lots, and the hereditaments hereinafter described constituted Lot 2 at the said sale:

That property was put up for sale.

AND WHEREAS at the said sale the Purchaser was the highest bidder for and was declared the purchaser of Lot 2 aforesaid at the price of £—, and he thereupon paid the sum of £— as a deposit and in part payment of his purchase-money to the person appointed by the Judge to receive the same, who has since paid the said deposit into Court to the credit of the said action, leaving the balance of £— payable into Court by the Purchaser pursuant to the recited Order:

That Purchaser was declared the highest bidder, and paid deposit.

AND WHEREAS the Master attached to the Chambers of the Judge [*or the Registrar of the said Court*] by his certificate (a)

Master's certificate of result of sale.

(1902), W. N. 137. But if, having regard to the nature of the proceedings in which an order for sale is made, it is to be presumed that the Court intends to sell the estate and interest of A. only, the sale will not bind any person whose interest is paramount to that of A., and a purchaser will not by virtue of s. 70 have a good title against that person: *Jones v. Barnett*, 1900, 1 Ch. 370; 68 L. J. Ch. 242; Wolst. Conv. Acts, 9th ed., 138.

(z) If the testator died after 1897 it will be unnecessary to recite the devise to the trustees. Part I. of the L. T. Act, 1897, enables executors to sell without an administration action. This Act has rendered sales rare in administration actions, except in the case of copyholds.

(a) Until the certificate becomes binding the highest bidder has not

dated the — day of — and filed on the — day of — duly certified the result of the said sale :

Payment of  
purchase-  
money into  
Court (b).

AND WHEREAS under a direction of the Master [*or the Registrar*] dated the — day of —, 19—, the Purchaser has paid the sum of £—, being the balance of his purchase-money after deducting the said deposit [together with the sum of £— for interest thereon at the rate of £— per cent. per annum (making together the sum of £—)], into Court to the credit of the said action to the account aforesaid, as the Vendors hereby acknowledge(c) :

Conveyance  
by holders of  
legal estate.

NOW THIS INDENTURE WITNESSETH that in obedience to the said Order and in consideration of the said sums of £— and £— so paid by the Purchaser into Court as aforesaid, the Vendors, As Trustees [*or As the Personal Representatives of the said X. Y., deceased*], hereby convey unto the Purchaser,

Habendum.

ALL, &c. (*see Forms in Sect. II., sup.*),

To HOLD unto and To THE USE of the Purchaser in fee simple.

(*Add acknowledgment for production of documents, Form No. 6, Sect. III., also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

Variation  
where timber  
is paid for at  
a valuation.

become the purchaser with the rights and liabilities of an owner, and any loss to the property falls on the vendor : Seton, 6th ed., 344. For forms of certificates, see Daniell's Ch. Forms, pp. 652 *et seq.*

(b) If the timber is to be paid for on a valuation, substitute the following recital :—

AND WHEREAS under a direction, &c. (*as above*), the Purchaser has paid the sum of £—, being the balance of the said purchase-money after deducting the said deposit, and also the sum of £—, being the value of the timber on the property which, according to the conditions of sale, was to be paid for at a valuation, and also the sum of £— for interest on the said sums of £— and £— at the rate of £— per cent. per annum from the — day of — last (making together the sum of £—), into Court to the credit aforesaid.

(c) The receipt of one of the cashiers of the Bank of England or of the registrar of the county court should be obtained by the purchaser as evidence of payment into Court.

No. II.

CONVEYANCE of FREEHOLDS on a SALE under the PARTITION ACTS, where CO-HEIRESSES have separately settled their SHARES (d).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the A Trustees), of the 1st part, E. F., of, &c., and G. H., of, &c. (hereinafter called the B Trustees), of the 2nd part, J. K., of, &c., and L. M., of, &c. (hereinafter called the C Trustees), of the 3rd part, and O. P., of, &c. (hereinafter called the Purchaser), of the 4th part :

WHEREAS X. Y., being at his death seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, died on the — day of —, 1880, intestate (e) and a widower, leaving three daughters his heiresses-at-law (namely,) R. Y., S. Y., and T. Y., each of whom accordingly became entitled to a one-third share in the said hereditaments :

AND WHEREAS the legal estate in the hereditaments hereinafter described is now vested in fee simple as to the one-third share of the said R. Y. (as appears from the first Schedule hereto) in the A Trustees, as to the one-third share of the said S. Y. (as

Parties.

Recital of intestacy and devolution of property to co-heiresses.

Short recital of present state of the title by reference to the schedules.

(d) By the Partition Act, 1868, it is provided that in suits for partition, where a decree for partition might have been made, if from the nature of the property or the number of the parties interested therein, or the absence or disability of some of those parties, or any other circumstance, a sale of the property is considered by the Court to be more beneficial than a division, the Court may, on the request of any of the parties, direct a sale : s. 3 ; or if the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the property in question, request the Court to direct a sale of the property and a distribution of the proceeds, instead of a division of the property among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale : s. 4 ; or if any party interested in the property requests the Court to direct a sale and a distribution of the proceeds, the Court may, unless the other parties interested in the property, or some of them, undertake to purchase the share of the party requesting the sale, direct a sale : s. 5. See also the Partition Act, 1876.

Provisions of Partition Acts.

There are two ways of preparing a conveyance under an order for sale — either the recitals may, as in the text, be confined exclusively to the devolution of the legal estate, merely stating that the equities are bound by the order, or the recitals may show that the equities are bound.

Preparation of conveyance on a sale under the Court.

(e) *I.e.*, before the L. T. Act, 1897.

appears from the second Schedule hereto) in the B Trustees, and as to the one-third share of the said T. Y. (as appears from the third Schedule hereto) in the C Trustees :

Recital of  
order for  
inquiries and  
sale after  
Master's  
certificate.

AND WHEREAS by an Order (hereinafter called the Order of 1904) of the Chancery Division of the High Court of Justice, made on the — day of — by the Honourable Mr. Justice — in a partition action Y. v. Y., 19—, Y., No.—, it was ordered (among other things) that inquiries should be made of what particulars the freehold hereditaments of the said X. Y., deceased, consisted at the time of his death and at the date of the Order of 1904, and as to who were the persons interested in the said hereditaments, and for what estates and interests and in what shares and whether they were parties to the said action, And it was also ordered that if it should be certified that all persons interested in the said hereditaments were parties to the said action or had been served with notice of judgment or were persons upon whom such service had been dispensed with, and if the persons interested in one moiety or upwards of the said hereditaments should request a sale the said hereditaments should be sold (/) with the approbation of the Judge, And it was further ordered that the money to arise from such sale should be paid into Court to the credit of the said action to an account entitled “ Proceeds of sale of freehold hereditaments ” :

Recital of  
Master's  
certificate.  
Result of  
inquiries.

AND WHEREAS pursuant to the Order of 1904 the Master attached to the Chambers of the Judge made his certificate in the said action dated the — day of —, 19—, and filed on the — day of —, 19—, and thereby certified (among other things) that the freehold hereditaments of the said X. Y., deceased, included both at the time of his death and at the date of the Order of 1904 the hereditaments hereinafter described, that the legal estate in the said hereditaments was vested in the parties hereto of the first three parts in the shares hereinbefore recited, and that all persons interested in the said hereditaments were parties to the said action or had been served with notice of the said judgment :

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(/.) An order for sale in a partition action operates as a conversion of the share of a person *sui juris* as from the date of the order, and if he dies before completion his share devolves as personalty : *Re Dodson*, 1908, 2 Ch. 638 ; 77 L. J. Ch. 830.

AND WHEREAS all persons in any manner interested in the said hereditaments are bound by the Order of 1904 :

Recital that all interests are bound by the Order.

AND WHEREAS the persons interested in two-thirds of the said hereditaments requested a sale and accordingly the hereditaments hereinafter described (with other hereditaments) were on the — day of —, 19—, with the approbation of the Judge, put up for sale by auction and the Purchaser was the highest bidder for and declared the purchaser of the hereditaments hereinafter described at the price of £— and paid a deposit of £— as part of his purchase-money, leaving the balance of £— payable into Court by him pursuant to the Order of 1904 :

Recital of sale by auction and payment of deposit.

AND WHEREAS the result of the said sale was duly certified by the Master by his certificate dated the — day of —, 19—, and filed on the — day of —, 19—, and it appears from such certificate that the Purchaser was the purchaser of the hereditaments hereinafter described at the price aforesaid and had paid the aforesaid deposit to the person appointed by the Judge to receive the same, who duly paid the said deposit into Court to the credit of “Y. v. Y., 19—, Y., No.—, Proceeds of sale of freehold hereditaments” :

Recital of certificate of result of sale.

AND WHEREAS pursuant to the Order of 1904 the Purchaser has paid the sum of £— (being the balance of his purchase-money of £—) into Court to the credit of “Y. v. Y., 19—, Y., No.—, Proceeds of sale of freehold hereditaments,” and which payments into Court as aforesaid of the said sums of £— and £— (making the aggregate purchase-money of £—) the parties hereto of the first three parts hereby acknowledge :

Recital of payment of balance of purchase-money into Court.

NOW THIS INDENTURE WITNESSETH as follows:—

1. PURSUANT to the Order of 1904 and in consideration of the payments into Court as aforesaid, the A Trustees as to the one-third share of the said R. Y., and As Trustees, hereby convey, and the B Trustees as to the one-third share of the said S. Y., and As Trustees, hereby convey, and the C Trustees as to the one-third share of the said T. Y., and As Trustees, hereby convey unto the Purchaser

Conveyance by persons having legal estate.

ALL THOSE, &c. (*see Forms in Sect. II., sup.*),

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple.

Habendum.

Acknowledgments as to documents.

2. THE A Trustees hereby acknowledge the right of the Purchaser to production of the deeds mentioned in the first schedule hereto and to delivery of copies thereof.

3 AND 4. (*Similar acknowledgments by the B and C Trustees as to the deeds in the second and third schedules respectively.*)

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

Documents and particulars showing the devolution of the one-third share of the said R. Y.

25th March, 1881. By an Indenture of this date and made, &c. (*Recite the title to the legal estate in this manner, e.g., conveyance on trust for sale and appointments of new trustees.*)

THE SECOND SCHEDULE ABOVE REFERRED TO.

Documents and particulars showing the devolution of the one-third share of the said S. Y.

THE THIRD SCHEDULE ABOVE REFERRED TO.

Documents and particulars showing the devolution of the one-third share of the said T. Y.

### No. III.

CONVEYANCE *on a SALE under the PARTITION ACTS where the PROPERTY DESCENDED before 1898 on Two CO-HEIRESSES, of whom ONE is an INFANT (g).*

Parties

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*one co-heiress*), of the 1st part, C. D., of, &c. (*person appointed to convey on behalf of infant co-heiress*), of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part :

Recite death of father of co-heiresses intestate.

WHEREAS X. B., being at his death seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, died on the —— day of ——, 1897, intestate,

Sale under S. L. Act of infant's share.

(g) See notes to last Precedent. This transaction can be carried out with less expense under S. L. Act, 1882, ss. 38 and 59, see Precedent XIII. of Group E., p. 416, *sup.*

and a widower, leaving the said A. B. and E. B. his only children and co-heiresses at law:

AND WHEREAS the said A. B. attained the age of twenty-one years on the — day of —, but the said E. B. is an infant: Dates of birth.

AND WHEREAS by an Order of the Chancery Division of the High Court of Justice made on the — day of — by the Honourable Mr. Justice — in an action, &c., the hereditaments hereinafter described were ordered to be sold, AND it was declared that upon such sale the said E. B. would be a trustee of her undivided moiety of the said hereditaments for the purchaser thereof within the meaning of the Trustee Act, 1893 (*h*), and the Court appointed the said C. D. to convey the moiety of the said E. B. accordingly: Order for sale.

AND WHEREAS (*Recite sale by auction, and Purchaser declared highest bidder—Master's certificate—and payment of purchase-money, as in Precedent I. of this Group, p. 468, sup.*): Conveyance by one co-heiress and the person appointed on behalf of other co-heiress to convey.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said Order and in consideration of the payment into Court as aforesaid, the said A. B., As Beneficial Owner, as to one moiety of the hereditaments hereinafter described, hereby conveys and the said C. D., as to the other moiety thereof, for and on behalf of the said E. B., and As Trustee (*i*), hereby conveys unto the Purchaser, &c.,

ALL, &c. (*see Forms, Sect. II., sup.*), Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple (*h*). Habendum.

IN WITNESS, &c.

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(*h*) See T. Act, 1893, ss. 31, 33; *Re Montagu*, 1896, 1 Ch. 549; 65 L. J. Ch. 372; see, also, *Re Hambrough*, 1909, 2 Ch. 620; 79 L. J. Ch. 19; Seton, 6th ed., 1270; *Davis v. Ingram*, 1897, 1 Ch. 477; 66 L. J. Ch. 386. If X. Y. had died after 1897 the declaration would have been unnecessary, as the legal estate would have passed to his legal personal representative, who would have been made a party to convey it to the purchaser. Where an infant by a next friend is one of several plaintiffs by counsel requesting a sale, and a sale is ordered upon that request, the proceeds of the infant's share should be earmarked as real estate: *Re Norton*, 1900, 1 Ch. 101; 69 L. J. Ch. 31. Sales of infant's land

(*i*) The person appointed to convey may give the statutory covenant for title implied by Conv. Act, 1881, s. 7 (1) (F), but can give no covenant on behalf of the person for whom he conveys: *Couper v. Harmer* (1887), 57 L. J. Ch. 460.

(*k*) In this case it may be better to take an acknowledgment as to documents separately under a 6*d.* stamp, for no deeds are recited. Add Form No. 11 in Sect. III. if the purchase money is £500 or under.

## No. IV.

CONVEYANCE *on a Sale by Order of the Court under*  
THE SETTLED ESTATES ACT, 1877 (*l*).

Parties. THIS INDENTURE, made, &c., BETWEEN R. S., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Recital of Will devising property to A. B. for life, with remainders over. WHEREAS X. Y., deceased, being at his death seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, duly made his Will dated the — day of —, and thereby, after appointing M. and N. to be his executors, devised all his real estate To the use of A. B. during his life without impeachment of waste, with remainders over :

Death of testator and probate. AND WHEREAS the said testator died on the — day of — without having revoked or altered his said Will, which was on the — day of — duly proved at the — Probate Registry by the executors therein named :

Recital of conveyance of life estate. AND WHEREAS by an Indenture of Conveyance dated the — day of —, and made between the said A. B. of the one part and the Vendor of the other part, in consideration of the sum of £—, the said A. B. conveyed his life estate in the hereditaments hereinafter described to the Vendor :

Order of Court for sale under Settled Estates Act. AND WHEREAS by an Order (*m*) of the Chancery Division of the High Court of Justice made on the — day of — by the

Provisions of Settled Estates Act as to sales. (*l*) Sales under this Act are now rare, as in most cases of settled estates a sale can be made without an application to the Court under the S. L. Acts. In the above Precedent it is supposed that the tenant for life has assigned his life estate. He cannot convey under the S. L. Acts without the consent of the assignee : S. L. Act, 1882, s. 50 (3). The assignee cannot exercise the S. L. Act powers, as they are not capable of assignment : *ib.*, s. 50 (1). In the text it is assumed that the tenant for life refuses to exercise his powers. Resort is therefore had to the Settled Estates Act, 1877, which (see s. 23) enables the assignee to present the petition asking the Court to exercise the discretionary powers conferred by s. 16 and order a sale. A petition under the Settled Estates Act may also be necessary in cases where an infant is only contingently entitled, and s. 59 of the S. L. Act, 1882, does not apply : see *Re Liddell* (1882), 52 L. J. Ch. 207 ; *Re Sparrow's S. E.*, 1892, 1 Ch. 412 ; 61 L. J. Ch. 260. S. 41 of the Conv. Act, 1881, applies the Settled Estates Act powers to meet such cases.

One case where the Act may be required.

(*m*) See Seton, 6th ed., 1799 *et seq.*, for form of order.

Honourable Mr. Justice — in the matter of the Settled Estates Act, 1877, and in the matter of a farm and lands known as — Farm, situated in the Parish of —, in the County of —, and containing — or thereabouts (meaning the hereditaments hereinafter described), and which Order was made upon the petition of the Vendor, it was ordered that the hereditaments hereinafter described should be sold with the approbation of the Judge and that the proceeds of such sale should be paid into Court to the credit of “*Ex parte* R. S., in the matter of the Settled Estates Act, 1877, Proceeds of the sale of the settled estates of, &c.” And it was further ordered that the Vendor should execute the deed or deeds of conveyance of the hereditaments hereinafter described to the Purchaser or Purchasers thereof on such sale being effected :

AND WHEREAS in pursuance of the said Order the hereditaments hereinafter described were on the — day of — put up for sale by public auction in one Lot, with the approbation of the Judge, and the Purchaser was the highest bidder for and was declared the purchaser thereof at the price of £— :

Pursuant to Order lands put up for sale.

AND WHEREAS the result of the said sale has been duly certified by the Master attached to the Chambers of the Judge, by his certificate dated the — day of —, and filed on the — day of — :

Master's certificate

AND WHEREAS the Purchaser has paid the said purchase-money of £— into Court to the credit aforesaid (n), as the Vendor hereby acknowledges :

Payment of purchase-money into Court.

NOW THIS INDENTURE WITNESSETH as follows:—

1. PURSUANT to the said Order and by virtue of the Settled Estates Act, 1877, and in consideration of the payment into Court as aforesaid, the Vendor hereby REVOKES (o) all the uses, trusts and provisions, by the recited Will of the said X. Y.

Vendor revokes uses of Will, and appoints to Purchaser in fee.

(n) The usual certificate of payment should be obtained from the Bank of England.

(o) S. 22 of the Act provides that on a sale the Court may direct a person to execute the conveyance, and that the conveyance shall take effect as if the settlement had contained a power enabling that person to effect the sale and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise as the Court directs : see *Re Warner's S. E.* (1881), 17 Ch. D. 711 ; 50 L. J. Ch. 542.

declared concerning the hereditaments hereinafter described, and hereby As Beneficial Owner, APPOINTS that

ALL, &c. (*see Forms, Sect. II., sup.*), shall henceforth remain and be To the USE of the Purchaser in fee simple.

Proviso cutting  
down Vendor's  
implied cove-  
nants for title.  
Documents.

2. PROVIDED ALWAYS, that so far as regards (*Form No. 1, Sect. III., sup.*).

3. THE Vendor hereby acknowledges (*Form No. 6, Sect. III., also Form No. 11, Sect. III., if required. Probably the Vendor may not have the custody of the documents.*)

IN WITNESS, &c.

## SECTION II.—CONVEYANCES ARRANGED ACCORDING TO THE CHARACTER OF THE GRANTEES OR PURCHASERS (OTHER THAN CORPORATIONS).

### GROUP A.—CONVEYANCES TO CO-OWNERS AND MARRIED WOMEN (*p*).

#### No. I.

#### CONVEYANCE to TENANTS in COMMON who contribute the PURCHASE-MONEY in equal shares (*q*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Purchasers), of the other part:

Recital of  
seisin and  
agreement  
for sale.

WHEREAS (*Form No. 1, Sect. I., sup., adding in the Agreement for sale "out of money belonging to the Purchasers in equal shares"*):

Conveyance  
to tenants  
in common.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchasers to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Purchasers

(*p*) The Precedents in this Group can be readily adapted to the case of leaseholds or copyholds.

Conveyances  
to purchasers  
in undivided  
shares to be  
avoided.

(*q*) Where practicable a conveyance in shares to tenants in common should be avoided, as it splits the property into shares and necessarily complicates the subsequent title. The next Precedent is intended to obviate this.

ALL THOSE, &c. (*see Forms, Sect. II., sup.*),

Parcels.

To HOLD unto and To THE USE of the Purchasers in fee simple as tenants in common in equal shares. Habendum.

(*Add acknowledgment and undertaking as to documents, Form No. 6, Sect. III., also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

## No. II.

CONVEYANCE of FREEHOLDS *by the direction of* Co-PURCHASERS *to such* USES *as they shall* JOINTLY APPOINT, *with* REMAINDER *to* TRUSTEES *on TRUST for* SALE (*v.*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c., and E. F., of, &c. (hereinafter called the Purchasers), of the 2nd part, and G. H., of, &c., J. K., of, &c. (hereinafter called the Trustees), of the 3rd part (*Recite seisin and Agreement for sale, as in last Precedent*): Parties.

AND WHEREAS the Purchasers have requested the Vendor to convey the said hereditaments in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH as follows:—

1. IN pursuance, &c. (*as in last Precedent*), the Vendor, As Beneficial Owner, at the request of the Purchasers (testified by their respectively executing these presents), hereby conveys unto the Trustees

Conveyance to such uses as Purchasers shall jointly appoint, with remainder to use of Trustees in fee simple.

ALL, &c. (*see Forms in Sect. II., sup.*),

To HOLD unto the Trustees in fee simple,

To SUCH USES, for such purposes, and generally in such manner as the Purchasers shall by deed jointly appoint: And in default of and until and subject to any such appointment,

To THE USE of the Trustees in fee simple, Upon the trusts and subject to the powers and provisions hereinafter contained.

2. THE Trustees (which expression, where the context so admits, includes the survivor of them and the executors or administrators of such survivor or other the trustees or trustee for the time being hereof) shall at the request of the Purchasers during their joint lives, and of the survivor of them during his

Trust for sale and to hold proceeds and

(*r*) The above Precedent is intended to meet the inconvenience of a conveyance to tenants in common referred to in the last note.

rents and profits in meantime in trust for Purchasers equally.

life and after the death of such survivor at such time or times as the Trustees shall think fit, sell the said hereditaments and shall stand possessed of the net money to arise from such sale after payment thereof of the expenses of and incidental to the execution of the trusts hereof and also of the rents and profits of the said hereditaments until sale, IN TRUST for the Purchasers in equal shares.

Power to postpone sale.

3. THE Trustees may postpone the sale of the said hereditaments for so long after the death of the survivor of the Purchasers (not being more than twenty-one years from such death), as the Trustees shall think fit.

Trustees to have powers of a tenant for life under S. L. Acts exercisable with consent of Co-Purchasers or survivor.

4. IN the meantime and until the sale of the said hereditaments the Trustees shall have and may exercise the powers of leasing and all other powers conferred on a tenant for life in possession of land by the Settled Land Acts, 1882 to 1890, such powers to be exercisable with the consent of the Purchasers during their joint lives and of the survivor of them during his life, and after the death of such survivor at the discretion of the Trustees.

Statutory power of appointing new trustees to apply.

[Number of trustees not to be reduced below two.]

5. THE statutory power of appointing new trustees shall for the purposes of these presents be vested in the Purchasers during their joint lives, and in the survivor of them during his life [AND the said power shall be exercised whenever the number of trustees is reduced below two, and no sale or lease by a sole trustee shall be valid].

Documents.

6. THE Vendor hereby acknowledges the right of the Trustees to production (*Form No. 6, Sect. III., sup., also Form No. 11, Sect. III., if required*).

IN WITNESS, &c.

### No. III.

#### CONVEYANCE to PURCHASERS as JOINT TENANTS (s).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of,

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(s) A conveyance to several persons without words indicating that they are to take as tenants in common constitutes a joint tenancy, see Dart, 7th ed., 958 *et seq.* The Bodies Corporate (Joint Tenancy) Act, 1899,

&c., and E. F., of, &c. (hereinafter called the purchasers), of the other part :

WHEREAS (*Form No. 1, Sect. I., adding out of money belonging to the Purchasers upon a joint account*).

Recital of seisin and Agreement for sale.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchasers to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Purchasers

Conveyance to joint tenants

ALL THAT, &c. (*see Forms, Sect. II., sup.*),

Parcels.

To HOLD unto and To THE USE of the Purchasers in fee simple as joint tenants (*t*).

Habendum.

(*Add acknowledgment and undertaking as to documents, Form No. 6, Sect. III.; also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

#### No. IV.

#### CONVEYANCE of FREEHOLDS to PARTNERS, where the PURCHASE is made out of PARTNERSHIP MONEY (*u*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c., E. F., of, &c., and G. H., of, &c., carrying on business

Parties.

enables corporate bodies to hold property in joint tenancy with individuals and as co-trustees : *Re Thompson*, 1905, 1 Ch. 229; 74 L. J. Ch. 133.

(*t*) The method of conveying land to trustees as joint tenants without disclosing a trust has generally been abandoned, because on the death of a trustee the trust must be disclosed to show that no duties are payable.

Secret trusts.

Where trusts are to be kept off the title the better plan is to vest the land in trustees on trust for sale, to give them full powers of management by reference to the S. L. Acts, and to declare the trusts of the proceeds by a deed of even date.

(*u*) See notes to Prec. V., Sect. I., Group D, p. 388, *sup.*

Under the above Precedent the partners take the legal estate as joint tenants : *Maugham v. Sharpe* (1864), 17 C. B. (N. S.) 443; *Wray v. W.*, 1905, 2 Ch. 349; 74 L. J. Ch. 687. On the death of one of them the property will be liable to be sold and the proceeds divided as part of the partnership assets, unless the partnership articles provide for a different arrangement.

Proper form of conveyance on purchase by partners.

in partnership at —, under the style or firm of — (hereinafter called “the Partners”), of the other part:

Recital of  
seisin and  
Agreement  
to sell.

WHEREAS the Vendor is now seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, and has agreed to sell the same to the Partners for the like estate in possession at the price of £—:

NOW THIS INDENTURE WITNESSETH as follows:—

Conveyance  
to partners as  
part of the  
partnership  
property.

1. IN pursuance of the said agreement and in consideration of the sum of £— now paid by the Partners out of partnership money to the Vendor (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby conveys unto the Partners

ALL, &c. (*see Forms in Sect. II., sup.*)

To HOLD unto and To THE USE of the Partners in fee simple as joint tenants and as part of their partnership property.

Power to sur-  
viving partner  
to sell, &c.

2. PROVIDED ALWAYS (*r*), that if any of the Partners shall die during the continuance of the partnership the survivors or survivor of them may sell, lease or otherwise deal with the said hereditaments or any part thereof for the purpose of winding up the partnership affairs or otherwise without the concurrence of the executors or administrators of the deceased Partner or Partners, and the receipt of such survivors or survivor for the purchase-money or other consideration shall effectually discharge the person paying the same therefrom, and from all liability to see to the application thereof or as to whether the partnership is on foot.

3. (*Add acknowledgment and undertaking as to documents, Form No. 6, Sect. III.; also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

No. V.

CONVEYANCE of FREEHOLDS to a MARRIED WOMAN who  
has PURCHASED the same out of her SEPARATE PROPERTY.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., the wife of E. D., of, &c. (hereinafter called the Purchaser), of the other part:

(*r*) This proviso may sometimes be omitted if the partnership articles provide that, on the death of a partner, his share shall be taken by the surviving partner at a valuation, so that a sale will be unnecessary. As to valuation, see *Horden v. H.*, 1910, A. C. 465.

WHEREAS (*Form No. 1, Sect. I., adding out of her separate property*):

Recital of  
seisin and  
Agreement  
for sale.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser out of her separate property to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

Conveyance to  
married  
woman.

ALL, &c. (*see Forms, Sect. II., sup.*),

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple (*w.*).

(*Acknowledgment and undertaking as to documents, Form No. 6, Sect. III., if required.*)

IN WITNESS, &c.

GROUP B.—CONVEYANCES TO GIVE EFFECT TO PURCHASES MADE OUT OF CAPITAL MONEY IN THE HANDS OF TRUSTEES OR IN COURT.

### No. I.

CONVEYANCE of FREEHOLDS to the USES of a SETTLEMENT,  
*where the PURCHASE is made out of CAPITAL MONEY (x).*

THIS INDENTURE, made, &c., BETWEEN A. B., of &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c. (*tenant for*

Parties.

(*w.*) The conveyance of freeholds to a married woman can be properly taken in this form, whether she was married before 1883 or since, and whether the separate money with which the purchase has been made has been acquired under the M. W. P. Act, 1882, or otherwise. It is no longer necessary to give her a general power of appointment.

How convey-  
ance to a  
married woman  
should be  
taken.

(*x.*) By the S. L. Act, 1882, s. 21, capital money arising under the Act is directed to be invested in (among other modes) the purchase of land in fee simple, or of copyhold land, or leasehold land held for sixty years or more unexpired at the time of purchase. The investment is to be made according to the direction of the tenant for life: s. 22; *Re Coleridge*, 1895, 2 Ch. 704; but the trustees are not bound to follow his direction if they have evidence that the investment is undesirable: *Re Hunt's S. E.*, 1906, 2 Ch. 11; 75 L. J. Ch. 496; and see *Re Hotham*, 1902, 2 Ch. 575; 71 L. J. Ch. 789. Where under a settlement money is in the hands of trustees and is liable to be laid out in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing therewith as the trustees may

Investment of  
capital money.

*life* (hereinafter called the Purchaser), of the 2nd part, and M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 3rd part :

Recital of  
seisin of  
Vendor.

WHEREAS the Vendor is now seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described :

Recital of  
Purchaser's  
settlement.

AND WHEREAS under an Indenture of Settlement dated the — day of —, and made, &c., the Purchaser is now tenant for life in possession free from incumbrances of the hereditaments thereby settled, and the Trustees are the present trustees of that Settlement for all the purposes of the Settled Land Acts, 1882 to 1890 :

Agreement for  
purchase.

AND WHEREAS the Purchaser, as such tenant for life as aforesaid, has agreed with the Vendor for the purchase of the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——, and has directed (*y*) the Trustees, as such trustees as aforesaid, to pay the said purchase-money out of capital money in their hands arising under the Settled Land Acts, 1882 to 1890, from hereditaments comprised in the recited Settlement [*or* (*z*) liable to be laid out in the purchase of land to be made subject to the limitations of the recited Settlement] :

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have independently of the Act, they may, at the option of the tenant for life, invest or apply the same as capital money arising under the Act: s. 33. S. 42 provides that the trustees are not to be liable for adopting any contract for purchase made by the tenant for life, or bound to inquire into the propriety of the purchase, or answerable as regards the price, or for the investigation of the title. Having regard to the indemnity given to trustees by s. 42, trustees will generally prefer to let the contract be entered into by the tenant for life under the Act, instead of taking on themselves the responsibility of purchasing under any express powers of the settlement. See the notes in Wolst. Conv. Acts, 9th ed., under these sections. The freeholds acquired should be conveyed to the uses of the settlement. A conveyance to the tenant for life or the trustees without reference to the uses of the settlement followed by a declaration of trust of the property would be improper: s. 24.

Land to be  
held on trust  
for sale.

The case of purchases of land by trustees to be held on trust for sale, see S. L. Act, 1882, s. 63, is dealt with in Group C, p. 498, *inf*.

(*y*) This direction exonerates the trustees from liability: S. L. Act, 1882, s. 42. Hence the tenant for life should execute the conveyance. The trustees also must execute to give a receipt for the purchase-money.

(*z*) The words in square brackets will be used where the capital money has not arisen from sales under the S. L. Acts.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Trustees by the direction of the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser (a) Conveyance.

ALL THOSE, &c. (*see Forms, Sect. II., sup.*), Parcels.

To HOLD unto the Purchaser in fee simple To THE USES, Upon the trusts, and subject to the powers and provisions which under the recited Settlement or by reason of the exercise of any power of charging therein contained are now subsisting or capable of taking effect with respect to freehold hereditaments which are subject to the limitations of that Settlement, but not so as to increase or multiply charges or powers of charging (b). Habendum to uses of settlement.

(*Add acknowledgment and undertaking as to documents, Form No. 6, Sect. III., if required, by the Vendor to the grantee to uses; also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

## No. II.

DEED of COVENANT to SURRENDER COPYHOLDS upon the TRUSTS of a WILL, where the PURCHASE is made out of CAPITAL MONEY (c).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c. (*tenant for life*) (hereinafter called the Purchaser), of the 2nd part, and M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 3rd part: Parties.

WHEREAS the Vendor is now seised of the hereditaments hereinafter described and covenanted to be surrendered for an Title of Vendor.

(a) It does not matter in this case whether the conveyance is made to the purchaser or the trustees. They are only grantees to uses. If, however, the tenant for life is selling to the trustees under S. L. Act, 1890, s. 12, the trustees should be made the grantees, otherwise the tenant for life would be conveying to himself; see also Prec. IV. of this Group, p. 489, *inf.*

(b) See S. L. Act, 1882, s. 24 (2), which provides the form to be used in conveyances of freeholds purchased with capital money.

(c) See S. L. Act, 1882, s. 21 (vii.).

estate of inheritance in possession according to the custom of the Manor of —, in the County of —, having been admitted tenant thereof on the — day of — :

Recital of Will under which the Purchaser is tenant for life.

AND WHEREAS under the Will dated the — day of —, and proved on the — day of —, of X. Y., who died on the — day of —, the Purchaser is now tenant for life in possession free from incumbrances of the hereditaments thereby settled, and the Trustees are the present trustees of the said Will with a power to sell all or any of the hereditaments thereby settled [*or for the purposes of the Settled Land Acts, 1882 to 1890*]:

Agreement for purchase.

AND WHEREAS the Purchaser, as such tenant for life as aforesaid, has agreed with the Vendor for the purchase of the hereditaments hereinafter described for an estate of inheritance in possession according to the custom of the said Manor, subject to the accustomed rents, fines, heriots, suits and services, but free from incumbrances at the price of £—, and has directed (*continue as in last recital of last Precedent*):

NOW THIS INDENTURE WITNESSETH as follows:—

Covenant to surrender.

1. IN pursuance of the said agreement, &c. (*as in last Precedent*), the Vendor, As Beneficial Owner, and by the direction of the Purchaser, hereby covenants with the Trustees and with each of them that the Vendor and all other necessary parties (if any) will forthwith at the cost of the Trustees surrender into the hands of the lord of the said Manor according to the custom thereof

Parcels.

ALL, &c. (*see Forms, Sect. II., sup.*), to which hereditaments the Vendor was admitted on the — day of — as aforesaid,

TO THE USE of the Trustees and their heirs at the will of the lord according to the custom of the said Manor at and under the rents, fines, heriots, suits and services therefor due and of right accustomed.

Declaration of trust.

2. THE Trustees hereby declare that they will after such surrender forthwith obtain admission to the hereditaments hereinbefore covenanted to be surrendered, and that they and the survivor of them and the heirs (*d*) and assigns of such survivor will stand possessed thereof, Upon trusts and subject to powers and pro-

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(*d*) S. 88 of the Copyhold Act, 1894, provides that s. 30 of the Conv. Act, 1881, shall not apply to copyholds vested in the tenant on the court rolls on trust or by way of mortgage.

visions corresponding as nearly as the law and circumstances permit, with the uses, trusts, powers and provisions which under the recited Will are now subsisting and capable of taking effect with respect to freehold hereditaments thereby settled, but not so as to increase or multiply charges or powers of charging (e).

(Add acknowledgments, &c., of documents, Form No. 6, Sect. III.; also Form No. 11, Sect. III., if required.)

IN WITNESS, &c.

### No. III.

#### ASSIGNMENT of LEASEHOLDS upon the TRUSTS of a SETTLEMENT, where the PURCHASE is made out of CAPITAL MONEY (f).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c. (*tenant for life*) (hereinafter called the Purchaser), of the 2nd part, and M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 3rd part :

WHEREAS by an Indenture of Lease dated the — day of — (Form No. 28, Sect. I., *sup.*) :

Recital of Lease to Vendor.

AND WHEREAS under an Indenture of Settlement (*continue as in Precedent I. of this Group*, p. 484, *sup.*) :

Recital of Purchaser's Settlement.

AND WHEREAS the Purchaser, as such tenant for life as aforesaid, has agreed with the Vendor for the purchase of the hereditaments comprised in the recited Lease for the residue of the term thereby granted free from incumbrances at the price of £—, and has directed (*continue as in Precedent I. of this Group*) :

Agreement for purchase.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement, &c. (*as in Precedent I. of this Group*), the Vendor, As Beneficial Owner, and by the direction of the Purchaser, hereby assigns unto the Trustees

Assignment of leaseholds.

(e) See S. L. Act, 1882, s. 24 (3). The surrender to and admission of the trustees will be taken in the ordinary form, see Prees. VI. and VII., Group A, pp. 329, 330, without reference to the trusts

(f) See S. L. Act, 1882, s. 21 (vii.). The term must have sixty years to run, unless the settlement authorises the acquisition of a shorter term. Trustees should not purchase leaseholds with onerous provisions unless the settlement authorises such property to be assigned to the tenant for life.

Purchase of leaseholds under S. L. Acts.

Parcels.

ALL the premises comprised in and demised by the recited Lease,

Habendum.

To HOLD unto the Trustees for the residue of the term granted by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the said Lease reserved and contained, and henceforth on the part of the Lessee to be paid, performed, and observed, but UPON THE TRUSTS and subject to the powers and provisions upon and subject to which the same ought to be held under the recited Settlement and having regard to the provisions of the Settled Land Acts, 1882 to 1890 (*g*).

Modern form  
of trusts of  
leaseholds  
acquired with  
capital money.

(*g*) See S. L. Act, 1882, s. 24 (3). The following words should be substituted if the settlement so directs:—UPON TRUSTS and subject to powers and provisions corresponding as nearly as the law and circumstances permit, with the uses, trusts, powers and provisions which under the recited Settlement are now subsisting and capable of taking effect with respect to freehold hereditaments subject to the limitations of the recited Settlement, but not so as to increase or multiply charges or powers of charging, and so that the beneficial interest in the hereditaments hereby assigned shall not vest absolutely in a person who is by the recited Settlement made by purchase tenant in tail, and (i.) who dies under the age of twenty-one years, or (ii.) who dies before he or she becomes entitled to the actual possession or the receipt of the rents and profits of the premises hereby assigned (or would be so entitled but for the trusts affecting the same under or by virtue of any term created by or under the said Settlement or under any statutory power), or (iii.) who dies before the expiration of twenty-one years from the determination of all estates for life preceding his or her estate tail without in either of the two last-mentioned cases having with the consent of the protector of the Settlement (if any) either barred the entail in all the freehold hereditaments for the time being subject to the limitations of the said Settlement or declared by deed that the leasehold premises or any of them should (without prejudice to any prior estate, interest or charge) vest in him or her absolutely, but on the death of any such person before attaining an absolutely vested interest in the said leasehold premises the same shall go as the freehold hereditaments subject to the limitations of the recited settlement would go. See on this Form, *Re Angerstein*, 1895, 2 Ch. 883; 65 L. J. Ch. 57; *Re Fothergill*, 1903, 1 Ch. 149; 72 L. J. Ch. 164; see also

2. THE Trustees (*h*) hereby covenant with the Vendor (*Form No. 5, Sect. III., sup.*). Covenant to pay rent, &c.

3. THE Vendor hereby acknowledges the right of the Trustees and of the Purchaser (*Forms Nos. 6 and 11, Sect. III., sup., if required*). Acknowledgment and undertaking as to documents.

IN WITNESS, &c.

## No. IV.

CONVEYANCE of a FREEHOLD REVERSION to the Uses of  
a SETTLEMENT, where the LEASEHOLD INTEREST is already  
subject to the TRUSTS of the SETTLEMENT and the PURCHASE  
is made out of CAPITAL MONEY (*i*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c. (*tenant for life*) (hereinafter called the Purchaser), of the 2nd part, and M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 3rd part :

WHEREAS (*Form No. 28, Sect. I., sup.*) :

Recital of Lease.

AND WHEREAS by an Indenture of Settlement dated the — day of —, and made, &c., certain freehold hereditaments situated at — (hereinafter called the Settled Freeholds) were limited to Uses under which the Vendor is now tenant for life in possession, And the Trustees are the present trustees thereof for

Recital of Purchaser's Settlement.

*Re Chesham*, 1909, 2 Ch. 329; 78 L. J. Ch. 692; *Re Parker*, 1910, 1 Ch. 581; 79 L. J. Ch. 161.

(*h*) The leaseholds being assigned to the trustees, they must covenant to pay rent, &c., if the vendor would be under a continuing liability under the covenants contained in the lease or in the assignment thereof. As to the right of the trustees to have the covenants in the lease specifically performed whilst the tenant for life is in possession, see *Re Fowler* (1881), 16 Ch. D. 723; Withers, 84; see also T. Act, 1893, s. 18, as to insurance. A tenant for life of specifically bequeathed leaseholds is liable to pay rent, &c., during the continuance of his interest : *Re Gyers*, 1899, 2 Ch. 54; 68 L. J. Ch. 442; and see *Re Copland*, 1900, 1 Ch. 326; 69 L. J. Ch. 240.

Position of trustees as regards leaseholds.

Sometimes the tenant for life covenants to indemnify the trustees. As to the trustees' right to indemnify out of the trust property for money expended in its preservation, see *Re Leslie* (1884), 23 Ch. D. 552; 53 L. J. Ch. 762; *Falcke v. Scottish Imperial Insurance Co.* (1887), 34 Ch. D. 234; 56 L. J. Ch. 707; *Re Earl of Winchilsea* (1889), 39 Ch. D. 168; 58 L. J. Ch. 20.

Right to indemnity.

(*i*) See S. L. Act, 1882, s. 21 (vi.).

all the purposes of the Settled Land Acts, 1882 to 1890, And by the said Settlement the hereditaments comprised in the recited Lease were (with other leasehold hereditaments) assigned to the Trustees for the residue of the term granted by the said Lease Upon trusts corresponding so far as might be with the limitations thereinbefore declared concerning the Settled Freeholds :

Recital that  
freehold rever-  
sion vested in  
Vendor.

AND WHEREAS the Vendor is seised in fee simple free from incumbrances of the freehold reversion in the hereditaments comprised in the recited Lease immediately expectant upon the term thereby granted :

Agreement  
for sale.

AND WHEREAS the Purchaser, as such tenant for life as afore-said, has agreed with the Vendor for the purchase of the said reversion free from incumbrances at the price of £——(k), and has directed (*continue as in Precedent I. of this Group*) :

Conveyance.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, &c. (*continue as in Precedent I. of this Group*), the Vendor, by the direction of the Purchaser As Beneficial Owner, hereby conveys unto the Trustees (l)

Parcels.

ALL THOSE hereditaments, &c. (*see Forms, Sect. II.*), and all other (if any) the premises comprised in the recited Lease,

Habendum.

To HOLD unto the Trustees in fee simple,

To THE INTENT that the term granted by the recited Lease shall forthwith merge and be extinguished in the fee simple of the said hereditaments, and so that the said hereditaments shall henceforth go and remain as freeholds To THE USES, Upon the trusts, and subject to the powers and provisions which under the recited Settlement or by reason of the exercise of any powers of charging therein contained are now subsisting or capable of taking effect with respect to the Settled Freeholds, but not so as to increase or multiply charges or powers of charging.

(*Add acknowledgment and undertaking as to documents, Form No. 6, Sect. III., to the Trustees, and Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

(k) It has been held in *Re Bruce*, 1905, 2 Ch. 372; 74 L. J. Ch. 578, that money may be raised under S. L. Act, 1882, s. 18, to purchase a reversion within the meaning of s. 21 (vi.), *i.e.*, that the word "enfranchisement" includes the conversion of leaseholds into freeholds by the purchase of the reversion.

(l) The trustees must be the grantees to uses in this case as the legal term granted by the lease is in them and it is to be merged.

## No. V.

CONVEYANCE by TRUSTEES for SALE to the USES of a SETTLEMENT, where the PURCHASE is made by the SETTLEMENT TRUSTEES on behalf of an INFANT TENANT for LIFE (m) out of CAPITAL MONEY.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., C. D., of, &c. (*trustees for sale*) (hereinafter called the Vendors), of the one part, and M., of, &c., and N., of, &c. (*settlement trustees*) (hereinafter called the Purchasers), of the other part :

Parties.

WHEREAS X. Y., being at his death seised of the hereditaments hereinafter described (*continue as in Form No. 16, Sect. I.*) :

Recital of Will devising property to Vendors on trust for sale, death of testator and probate.

AND WHEREAS under an Indenture of Settlement dated the — day of —, and made between, &c., E. F., an infant, is now or would, if of full age, be tenant for life in possession of the freehold hereditaments thereby settled (hereinafter called the Settled Freeholds), and the Purchasers are the present trustees of the said Settlement for all the purposes of the Settled Land Acts, 1882 to 1890 :

Recital of Settlement under which the Purchasers are S. L. Act trustees.

AND WHEREAS the Purchasers, as such trustees as aforesaid, and acting on behalf of the said E. F., have agreed with the Vendors for the purchase of the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £—— out of capital money in the hands of the Purchasers arising under the said Acts :

Agreement for purchase.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchasers to the Vendors as such trustees as aforesaid (the receipt of which sum the Vendors hereby acknowledge), the Vendors, As Trustees, hereby convey unto the Purchasers

Conveyance.

ALL THOSE, &c. (*see Forms, Sect. II., sup.*),

Parcels.

To HOLD unto the Purchasers in fee simple, discharged from all the trusts, powers and provisions of the recited Will, and so discharged To THE USES, Upon the trusts, and subject to the powers and provisions which under the recited Settlement or by

Habendum.

(m) See S. L. Act, 1882, s. 60, which gives the trustees the powers of a tenant for life, and s. 21 (vii.), which confers the power to purchase land.

reason of the exercise of any power of charging therein contained are now subsisting or capable of taking effect with respect to the Settled Freeholds, but not so as to increase or multiply charges or powers of charging.

(Add acknowledgment for production of documents, Form No. 6, Sect. III., sup., and Form No. 11, Sect. III., if required.)

IN WITNESS, &c.

## No. VI.

### CONVEYANCE to the Uses of a COMPOUND SETTLEMENT, where the PURCHASE is made out of CAPITAL MONEY.

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c. (*tenant for life*) (hereinafter called the Purchaser), of the 2nd part, and M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 3rd part :

Seisin of Vendor. WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described :

Recital of Compound Settlement under which the Purchaser is tenant for life. AND WHEREAS under the several Indentures, short particulars whereof are contained in the [first] Schedule hereto, certain hereditaments (hereinafter called the Settled Freeholds) now stand limited to uses under which the Purchaser is tenant for life in possession and the Trustees are under the Order also mentioned in that Schedule the present trustees of the Compound Settlement, constituted by the said Indentures, for all the purposes of the Settled Land Acts, 1882 to 1890 :

Agreement for sale. AND WHEREAS the Purchaser, as such tenant for life as aforesaid, has agreed with the Vendor for the purchase of the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——, and has directed the Trustees, as such trustees as aforesaid, to pay the said purchase-money out of capital money in their hands as such trustees arising under the Settled Land Acts, 1882 to 1890 :

Conveyance. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Trustees by the direction of the Purchaser to

the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

ALL THOSE, &c. (*see Forms, Sect. II., sup.*),

Parcels.

To HOLD unto the Purchaser in fee simple, To THE USES, Upon the trusts, and subject to the powers and provisions which under the Settlement constituted by the several Indentures mentioned in the [first] Schedule hereto are now subsisting or capable of taking effect with respect to the Settled Freeholds, but not so as to increase or multiply charges or powers of charging.

Habendum.

(*Add acknowledgment and undertaking as to the documents in the second schedule, Form No. 6, Sect. III., to the Purchaser, also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

THE [FIRST] SCHEDULE ABOVE REFERRED TO (*n*).

- 18— Indenture of Settlement of this date made between, &c., whereby, &c.
- 18— Indenture of Appointment of New Trustees of this date, made between, &c.
- 18— Indenture of this date, made between, &c. (*charging the Settled Freeholds with certain jointures and portions*).
- 19— Disentailing Assurance of this date duly enrolled and made between, &c.
- 19— Indenture of Re-settlement of this date, made, &c.
- 19— Order of this date appointing the Trustees to be trustees for the purposes of the Settled Land Acts, 1882 to 1890, of the Compound Settlement consisting of the said Settlement of 18— the Disentailing Assurance of 19— and the Re-settlement.

[THE SECOND SCHEDULE ABOVE REFERRED TO.]

[Particulars of documents retained in the custody of the Vendor.]

(*n*) This schedule is merely for the purpose of showing of what the compound settlement consists. It is assumed that some family charge is subsisting under the first-mentioned settlement and that the purchaser did not acquire his life estate under that settlement.

## No. VII.

CONVEYANCE *where the PURCHASE-MONEY has arisen from the SALE of SETTLED LAND which was on sale* RELEASED *from a MORTGAGE in FEE SIMPLE, and where the PURCHASED LAND is made a SUBSTITUTED SECURITY for the MORTGAGE DEBT (o).*

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c. (*tenant for life*) (hereinafter called the Purchaser), of the 2nd part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 3rd part, and E. F., of, &c. (*mortgagee in fee (p)*) (hereinafter called the Mortgagee), of the 4th part:

Recital of seisin of Vendor.

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments described in the first Schedule hereto:

Recital of mortgage of part of the estates subsequently settled.

AND WHEREAS by an Indenture of Mortgage dated the — day of —, and made between, &c., certain hereditaments situated in the County of — were conveyed unto and to the Use of the Mortgagee in fee simple by way of mortgage for securing payment to him of the principal sum of £—, with interest thereon as therein mentioned:

Recital of Purchaser's Settlement including the mortgaged land.

AND WHEREAS by an Indenture of Settlement dated the — day of —, and made, &c., the hereditaments comprised in the recited Mortgage (subject to the principal money and interest thereby secured) were (with other hereditaments) limited to Uses under which the Purchaser is now tenant for life in possession

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(o) See S. L. Act, 1882, s. 24 (4).

Mortgage of life estate.

(p) Where the mortgagee's security only consists of the life estate, the mortgage should not be brought on the title. The conveyance to the uses of the settlement should be taken in the usual form without the concurrence of the mortgagee. The consent of the mortgagee to the purchase (see S. L. Act, 1882, s. 50 (3)) should be given separately, and a memorandum indorsed on the mortgage to the effect that certain property has been sold and the proceeds applied in the purchase of the land acquired by the conveyance, and that it is intended that the life estate of the tenant for life in the new property shall be subject to the security. If required a legal mortgage of the life estate in the new mortgage can be given to the mortgagee by a deed supplemental to the mortgage.

and the Trustees are the present trustees of the said Settlement for all the purposes of the Settled Land Acts, 1882 to 1890 :

AND WHEREAS from time to time divers sales of the hereditaments comprised in the recited Mortgage have been made by the Purchaser, as such tenant for life as aforesaid, and the Mortgagee concurred in such sales in consideration of the hereditaments to be purchased from the money arising from such sales being made a substituted security to him for his said mortgage debt :

Recital of sales with concurrence of Mortgagee.

AND WHEREAS the Purchaser, as such tenant for life as aforesaid, has agreed with the Vendor for the purchase of the hereditaments described in the first Schedule hereto and the fee simple thereof in possession free from incumbrances at the price of £—— and has directed the Trustees, as such trustees as aforesaid, to pay the said purchase-money out of capital money in their hands arising from the aforesaid sales :

Agreement for sale.

AND WHEREAS the said principal sum of £—— is still owing to the Mortgagee on the security aforesaid and the Purchaser has accordingly requested the Vendor to convey the said hereditaments in manner hereinafter appearing :

Recital that mortgage debt still owing.

NOW THIS INDENTURE WITNESSETH as follows :—

1. In pursuance of the said agreements and in consideration of the sum of £—— now paid to the Vendor by the Trustees by the direction of the Purchaser and with the consent of the Mortgagee (q) (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, and by the direction of the Purchaser, hereby conveys unto the Mortgagee

Conveyance.

ALL the hereditaments described in the first Schedule hereto and delineated on the plan drawn on these presents and thereon coloured ——

Parcels.

To HOLD unto and To THE USE of the Mortgagee in fee simple, subject to the like right of redemption as is now subsisting under the recited Mortgage with respect to the hereditaments remaining subject to the security thereof, and so that on payment of the principal money and interest thereby secured the hereditaments hereby conveyed shall be conveyed

Habendum.

(q) If the mortgagee has a lien on the capital money arising from sales of part of his security, it seems that his consent should be obtained to its application by the trustees.

To THE USES, Upon the trusts, and subject to the powers and provisions which under the recited Settlement or otherwise or by reason of the exercise of any powers of charging therein contained may then be subsisting or capable of taking effect with respect to the freehold hereditaments subject to the limitations of that Settlement, but not so as to increase or multiply charges or powers of charging.

Acknowledg-  
ment and  
undertaking as  
to documents.

2. THE Vendor hereby acknowledges the right of the Mortgagee and the Purchaser to production of the documents mentioned in the second Schedule hereto (*Form No. 6, Sect. III.*).

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

Particulars of the hereditaments hereby conveyed.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Particulars of documents retained in the custody of the Vendor.

### No. VIII.

CONVEYANCE of FREEHOLDS to the USES of a SETTLEMENT,  
*where the PURCHASE is made out of CAPITAL MONEY IN COURT.*

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c. (*tenant for life*) (hereinafter called the Purchaser), of the 2nd part, and M., of, &c., and N., of, &c. (hereinafter called the Trustees (*r*)), of the 3rd part :

Seisin of  
Vendor.

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described :

Recital of  
Purchaser's  
settlement.

AND WHEREAS under an Indenture of Settlement dated the — day of —, and made, &c., certain freehold hereditaments now stand limited to uses under which the Purchaser is tenant for life in possession free from incumbrances, and the Trustees are the present trustees thereof for all the purposes of the Settled Land Acts, 1882 to 1890 :

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(*r*) It is not essential that the trustees should execute, though it is convenient to express them to be parties.

AND WHEREAS in the year 19— certain other hereditaments then subject to the limitations of the recited Settlement were acquired by the — Company under the powers conferred by the — Company's Act, 19—, which incorporates the Lands Clauses Consolidation Act, 1845, and the purchase-money arising from those hereditaments was paid into Court to the credit of "Ex parte, &c." (*give the title of the account*)(s), and is now represented by £— Consols :

Recital of compulsory purchase of settled land and payment of purchase-money into Court.

AND WHEREAS by an Order (t) of the Chancery Division of the High Court of Justice made by the Honourable Mr. Justice — on the — day of — upon the petition [application (u)] of the Purchaser the purchase of the hereditaments hereinafter described at the price of £— out of the funds in Court was approved by the Court and inquiries were directed to be made whether a good title could be made to the said hereditaments, and if such title could be made it was ordered that a proper conveyance of the said hereditaments should be approved by the Judge, and that upon the execution of such conveyance by such parties as the Judge should direct being certified the funds in Court should be dealt with as directed in the payment schedule to the said Order, of which the Schedule hereto is a copy :

Order approving purchase and giving directions.

AND WHEREAS by his certificate (v) dated the — day of — and filed on the — day of — the Master attached to the Chambers of the said Judge certified that a good title had been made to the hereditaments hereinafter described, that a proper conveyance thereof (meaning these presents) had been settled,

Master's certificate pursuant to the Order.

(s) See L. C. C. Act, 1845, s. 69, which provides that the money shall be paid into Court "*Ex parte* the promoters of the undertaking (describing them by their proper name), in the matter of the special Act (citing it), &c."

(t) For form of order, see Seton, 6th ed., 1723. The petition describes the property, and the order approves the purchase, directs inquiries as to title, and orders the conveyance to be executed and the payment out of Court of the purchase-money.

(u) See L. C. C. Act, 1845, s. 70. The money is paid out of Court on the petition of the person entitled to the rents and profits : see *Ex p. G. W. Ry.* (1910), 74 J. P. 21. If the value of the money in Court does not exceed £1,000 the application should be by way of summons : O. 55, r. 2. S. 69 of the L. C. C. Act, 1845, authorises the money in Court to be applied in the purchase of other lands to be conveyed to the same uses, &c., as the land in respect of which the money was paid into Court stood settled.

(v) For form of certificate, see Daniell's Chancery Forms, 5th ed., Form No. 1211, p. 591.

and that the Vendor was the person to execute these presents and was the person to receive the sum of £—— mentioned in the said Order to be raised as thereby directed:

Approval by  
Judge.

AND WHEREAS these presents have been approved by the said Judge, as appears by the signature of the Master in the margin hereof:

Conveyance to  
uses of settle-  
ment.

NOW THIS INDENTURE WITNESSETH that pursuant to the said Order and in consideration of the sum of £—— to be paid (*x*) to the Vendor as thereby directed, the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser (*continue as in Precedent I. of this Group, p. 485, sup.*).

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Particulars of the schedule to the Order hereinbefore recited.

(*To contain a copy of the payment schedule to the Order (y).*)

IN WITNESS, &c.

GROUP C.—CONVEYANCES TO GIVE EFFECT TO PURCHASES MADE BY TRUSTEES OF PERSONALTY SETTLEMENTS OR WILLS, WITH POWER TO PURCHASE LAND.

#### No. I.

CONVEYANCE OF FREEHOLDS to TRUSTEES *purchasing under a Power contained in a PERSONALTY SETTLEMENT (z), where the TRUSTS are kept off the title by a TRUST FOR SALE. Variation where power is contained in a WILL.*

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c., and J. D., his wife (*the persons whose consent is required by the Settlement*), of the 2nd part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Trustees), of the 3rd part:

Recital of  
seisin of  
Vendor.

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described:

(*x*) The purchase-money is not paid out of Court until the conveyance is executed. A receipt by the vendor should be indorsed on the conveyance after he has received the money.

(*y*) For form of schedule, see Seton, 6th ed., 223, Form 62.

When land  
should be con-  
veyed on trust  
for sale.

(*z*) This is the form usually adopted where trustees are purchasing under a power contained in a personalty settlement. It is the practice to provide in the settlement that the land may be purchased by the trustees at the

AND WHEREAS the Trustees have at the request of the said C. D. and J. D. (testified by their execution of these presents) agreed to purchase from the Vendor the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £——: Agreement to purchase.

AND WHEREAS it is desired by the parties hereto of the 2nd and 3rd parts that the said hereditaments shall be conveyed in manner and upon the trusts hereinafter appearing: Manner of conveyance.

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchasers to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Trustees Conveyance.

ALL THOSE, &c. (*see Forms, Sect. II., sup.*), Parcels.

To HOLD unto and To THE USE of the Trustees in fee simple Upon the trusts hereinafter contained (that is to say):— Habendum.

2. THE Trustees (which expression, where the context so admits, includes the survivor of them and the executors or administrators of such survivor or other the trustees or trustee for the time being hereof) shall sell the said hereditaments or any part thereof with power to postpone any such sale and so that during the joint lives of the said C. D. and J. D. and the life of the survivor of them every sale be made only with their, his, or her consent in writing, and shall stand possessed of the net money to arise from sales under the trust for sale aforesaid after Trust for sale.  
  
Trusts of proceeds of sale.

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request of the husband and wife and to direct that it shall be conveyed to the trustees upon trust for sale. This course enables the trustees to keep the trusts of the settlement off the title, as the trusts declared by the conveyance are only trusts of the *proceeds of sale*. Apart from such direction, provided that it is clear that the land when purchased is to be treated as personalty, the proper way to give effect to the intention of the settlement is to take a conveyance upon trust for sale. Where the trusts of the proceeds of sale cannot be kept off, the conveyance must be taken in the form of Prec. IV. of this Group, p. 503, *inf.*

In the case in the text the vendor is not concerned to see whether the trustees have power to purchase or not. He is simply requested to execute the conveyance in a particular form, and cannot call for the production of the settlement. If, however, the trustees by some error give him express notice of the settlement he could require its production.

In the case of a purchase by the trustees of a Will the vendor can always satisfy himself by inspecting it at Somerset House.

Purchase by trustees of a Will where there is a trust for sale.

payment thereout of all costs incidental thereto, and also of the rents and profits of the premises until sale,

Upon the trusts and subject to the powers and provisions which, under an Indenture (*a*) dated the — day of —, and made between, &c. (being a Settlement made in consideration of the marriage then intended and afterwards solemnised between the said C. D. and J. D.), are declared and now subsisting with respect to money forming part of the [husband's or wife's, *as the case may be*] trust fund thereby settled.

[Variation where power to purchase is contained in a Will.]

[Upon the trusts and subject to the powers and provisions which under the Will dated, &c., and proved on, &c., of the late X. Y., who died on, &c., are declared and now subsisting with respect to money forming part of the residuary estate of the said testator (*or of the share settled by the said Will for the benefit of — and her issue or otherwise as required*).]

Powers of management, &c.

3. SUBJECT to any order to be obtained under section seven of the Settled Land Act, 1884, the Trustees shall, with the consent in writing of the said C. D. and J. D. or the survivor of them, and after the death of both at the discretion of the Trustees have and may exercise (*b*) in reference to any messuages, lands, or hereditaments for the time being subject to the trusts of these presents all the powers which are by the Settled Land Acts, 1882 to 1890, or any Act amending the same conferred on a tenant for life in possession of land [and may raise and pay out of capital or income any money required for the purposes of the powers hereby conferred and in the opinion of the Trustees properly payable out of capital or income].

Power to appoint new trustees.

4. THE said C. D. and J. D. (*c*) during their joint lives and the survivor of them shall have power to appoint a new trustee or new trustees of these presents, but every appointment of a trustee

(*a*) This does not bring the settlement on the title.

(*b*) This power should correspond with the power in the settlement. It is assumed in the text that the above Settled Land Act powers were conferred by the settlement.

Appointments of new trustees of conveyances on trust for sale.

(*c*) The power must be made to correspond with that in the settlement or Will. Whenever a new trustee is appointed of the money settlement, he should (but by a separate deed in order to keep the settlement off the title) also be appointed a trustee of the above conveyance. If when the settlement was made there was a deed of even date conveying land on trust for sale, or if there have been several purchases under the power to purchase land, then as regards all the conveyances of land one deed of appointment will be sufficient.

Variations in the case of a Will.

Besides the variations in the text it is probable, in case the power to purchase is contained in a Will, that the trust for sale and the powers of

hereof shall be effected by a separate instrument from that appointing a trustee of the above-mentioned Settlement [Will].

5. THE Vendor hereby acknowledges the right of the Trustees and each of them (*Form No. 6, Sect. III.; also Form No. 11, Sect. III., if required*).

Acknowledgment and undertaking as to documents.

IN WITNESS, &c.

## No. II.

DEED of COVENANT to SURRENDER COPYHOLDS to TRUSTEES purchasing under a power contained in a PERSONALTY SETTLEMENT, where the TRUSTS are kept off the title by a TRUST for SALE.

THIS INDENTURE, made, &c. (*Parties as in last Precedent*):

Parties.

WHEREAS on the — day of — the Vendor was admitted to the copyhold hereditaments hereinafter described, To HOLD to the Vendor and his heirs at the will of the lord according to the custom of the Manor of —, in the County of — :

Recital of admission of Vendor

AND WHEREAS (*as in last Precedent, saying for an estate of inheritance according to the custom of the said Manor instead of "in fee simple," and say covenanted to be surrendered instead of "conveyed"*):

Agreement for purchase and manner of conveyance.

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN pursuance, &c. (*as in last Precedent*), the Vendor, As Beneficial Owner, hereby covenants with the Trustees and with each of them (*continue as in Precedent II. of last Group, p. 486, sup.*).

Covenant to surrender.

2. THE Trustees hereby declare that they will upon obtaining such surrender forthwith obtain admission (*d*) to the said hereditaments, and that they and the survivor of them and the heirs or assigns of such survivor (hereinafter included in the expression the Trustees) will stand possessed thereof Upon trust to sell (*continue as in paragraph 2 of last Precedent*).

Agreement by Trustees to obtain admission; trust for sale and trusts of proceeds.

3, 4, AND 5 as in last Precedent.

IN WITNESS, &c.

management, as well as the power to purchase, can be exercised by the trustees without the consent of any beneficiary. If so, the references to C. D. and J. D. should be struck out.

(*d*) The trustees will be admitted without reference to any trust. The surrender and admission will be prepared by the Steward. The stamp will be on the surrender.

## No. III.

ASSIGNMENT of LEASEHOLDS to TRUSTEES purchasing  
under a POWER contained in a PERSONALTY SETTLEMENT,  
where the TRUSTS are kept off the title by a TRUST for  
SALE.

Parties. THIS INDENTURE, made, &c. (*Parties as in Precedent I. of this Group, p. 498, sup.*).

Recital of Lease and mesne assignments. WHEREAS by an Indenture of Lease (*Form No. 28, Sect. I., sup., showing that the Lease is now vested in the Vendor*):

Agreement to purchase. AND WHEREAS the Trustees have at the request of the said C. D. and J. D. (testified by their execution of these presents) agreed to purchase from the Vendor free from incumbrances the premises comprised in the recited Lease for the residue of the term thereby granted at the price of £—:

Manner of assignment. AND WHEREAS it is desired by the parties hereto of the 2nd and 3rd parts that the premises shall be assigned in manner and upon the trusts hereinafter appearing:

NOW THIS INDENTURE WITNESSETH as follows:—

Assignment. 1. IN pursuance of the said agreement and in consideration of the sum of £— now paid by the Trustees to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby assigns unto the Trustees

Parcels. ALL the premises comprised in and demised by the recited Lease,

Habendum. To HOLD unto the Trustees for the residue of the term granted by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the said Lease reserved and contained and henceforth on the part of the lessee to be paid, performed, and observed, but Upon the trusts and subject to the powers and provisions hereinafter contained.

Covenant by Purchasers to pay rent, &c. 2. THE Trustees hereby covenant with the Vendor (*c*) (*Form No. 5, Sect. III., sup.*).

Trust for sale and trusts of proceeds. 3. THE Trustees (*continue as in paragraph 2 of Precedent I. of this Group*).

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(*c*) As the trustees take the legal term they should give this covenant. If necessary they can obtain a separate indemnity from the beneficiaries.

As to this Precedent see notes to Prec. I. of this Group.

4, 5, AND 6 as in paragraphs 3, 4, and 5 of Precedent I. of this Group.

IN WITNESS, &c.

#### No. IV.

CONVEYANCE to TRUSTEES *purchasing under a Power contained in a WILL or PERSONALTY SETTLEMENT, where the TRUSTS CANNOT be kept off the title by means of a TRUST for SALE (f).*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c., and J. D., his wife (*persons whose consent is required by the Will or Settlement*), of the 2nd part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Purchasers), of the 3rd part: Parties.

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described: Seisin of Vendor.

AND WHEREAS under the Will dated the — day of — and proved on the — day of — of X. Y., who died on the — day of — [an Indenture of Settlement dated the — day of —, and made, &c.], the Purchasers have power at the request in writing of the said C. D. and J. D. during their joint lives to invest money for the time being subject to the trusts of the said Will [Settlement] in the purchase of land to be held by the Purchasers upon the trusts therein declared: Recital of Will or Settlement under which the Purchasers have power to purchase.

AND WHEREAS in exercise of the said power and at the request of the said C. D. and J. D. (testified by their execution of these presents) the Purchasers have agreed with the Vendor for the purchase of the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £—: Agreement to purchase.

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(f) See notes to Prec. I. of this Group. The above Precedent should only be used when it is impossible (*e.g.*, where adjoining land has been acquired and the trusts disclosed or there is no express or implied trust for sale) to keep the trusts off the title by a trust for sale, as in the preceding Precedents. The above Precedent may be readily adapted to the case of copyholds or leaseholds, see Prees. V. and VIII. of Sect. I., Group A, pp. 328, 331, *sup.*

Conveyance. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchasers as such trustees as aforesaid to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Purchasers

Parcels. ALL THAT, &c. (*see Forms in Sect. II., sup.*),

Habendum. To HOLD unto and To THE USE (*g*) of the Purchasers in fee simple, Upon the trusts (*h*), and subject to the powers and provisions upon and subject to which the same ought to be held by reason of the said purchase-money forming part of the residuary estate of the said testator [*or of the (husband's or wife's, as the case may be) trust fund comprised in the said Settlement*] (*i*).

(*Add acknowledgment and undertaking as to documents, Form No. 6, Sect. III., to the Purchasers ; also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

(*g*) The trustees must take the legal estate in this case unless the settlement provides otherwise. Compare the conveyances to the uses of settlements in the last Group.

(*h*) These words bring the trusts of the Will or settlement on the title. Where the land cannot be taken on trust for sale, the course of taking a simple conveyance to the trustees without reference to the settlement, accompanied by a separate declaration of trust by them, has sometimes been adopted. Nothing can be gained by this, as on a sale the declaration of trust should be abstracted, and also, on the appointment of a new trustee of the conveyance, the trust immediately becomes apparent.

(*i*) As the settlement is brought on the title, no object can be attained by inserting in the conveyance the powers of management and of appointing new trustees contained in the settlement as in the preceding Precedents. All the powers of the settlement are applied to the land by the manner in which the conveyance is taken.

Powers to purchase in Realty Settlements or Wills.

The Precedents in this Group are not applicable to the case of a power to purchase land contained in a Realty Settlement or Will (this power is not supplied by the S. L. Act, 1882, s. 21), where the land is limited to a tenant for life with remainders over. In such a case the Precedents in Group B, pp. 483 *et seq.*, should be used.

## SECTION III.—CONVEYANCES TO AND BY CORPORATIONS.

GROUP A.—CONVEYANCES TO AND BY COMPANIES (*k*).

## No. I.

CONVEYANCE *by an OWNER in FEE to a RAILWAY COMPANY (a).*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. Parties.  
 (hereinafter called the Vendor), of the one part, and the —  
 Railway Company (hereinafter called the Company), of the other  
 part:

WHEREAS the Vendor is seised in fee simple in possession free Recital of Vendor's seisin,  
 from incumbrances of the hereditaments hereinafter described:

AND WHEREAS the Company require and are by the — that land is required by Company.  
 Railway Act, 19—, and the Acts incorporated therewith authorised  
 to acquire and hold the said hereditaments for the purposes of  
 the said Act of 19—:

AND WHEREAS the Company have agreed with the Vendor for Agreement to purchase.  
 the purchase of the hereditaments hereinafter described and the  
 fee simple thereof in possession free from incumbrances [together  
 with the mines and minerals thereunder (*b*)] at the price of  
 £ —, which sum shall include (*c*) compensation for all damage to  
 be sustained by the Vendor and the persons deriving title

(*k*) "Statutory companies" are exempt from increment value duty, Duties on land values in case of statutory companies.  
 reversion duty, and undeveloped land duty so long as the land is held for  
 the purposes of their undertaking and cannot be appropriated, except  
 temporarily, for other purposes, but increment value duty attaches when the  
 land is sold: Fin. (1909-10) Act, 1910, s. 38. The increment value duty  
 cannot be treated as part of the costs of conveyance or taken into account  
 in assessing compensation for the purposes of the L. C. C. Acts: sub-s. 3.  
 For definition of "statutory company," see sub-s. 4. The exemption does  
 not apply to mineral rights duty. The exempted increment value duty is  
 not "deemed paid."

(*a*) See notes to Prec. XV., Agreements for Sale, p. 266, *sup*.

(*b*) In a conveyance to a railway company the mines and minerals do not  
 pass unless expressly mentioned: R. C. C. Act, 1845, s. 77.

(*c*) If a further sum is to be paid for severance, and is assessed separately,  
 there should be a separate receipt for it; and it will be unnecessary to refer  
 to it in the conveyance.

under him by reason of the severance of the hereditaments hereinafter described from his other lands or by reason of such other lands being injuriously affected by the execution of the powers conferred by the said Act, and also for all works which might otherwise be required to be made and maintained for the accommodation of such other lands [save and except the works mentioned in the second Schedule hereto]:

NOW THIS INDENTURE WITNESSETH as follows:—

Conveyance. 1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Company to the Vendor (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby conveys unto the Company

Parcels. ALL THAT, &c. (*Form No. 4, Sect. II., sup., where the necessary additions, if mines and minerals are intended to pass, will be found*).

Habendum. TO HOLD unto and TO THE USE of the Company and their assigns in fee simple (*d*).

[Qualification of general words.] [2. PROVIDED ALWAYS, that (*Form No. 21, Sect. III., sup., if required (e)* ).]

[Release of right of pre-emption.] [3. For the consideration aforesaid the Vendor hereby releases to the Company ALL such right of pre-emption as, but for this release, the Vendor and the persons deriving title under him would be entitled to under section one hundred and twenty-eight of the Lands Clauses Consolidation Act, 1845, in respect of the land hereby conveyed, or any part thereof, in the event of the same being hereafter sold as superfluous land under the said Act (*f* ).]

Acknowledgment, &c., as to deeds. 4. THE Vendor hereby acknowledges the right of the Company (*Form No. 6, Sect. III., sup., if required, as to documents in the first schedule*).

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(*d*) The words “according to the true intent and meaning of the said Act” are sometimes inserted here, but they are of no value, and had better be omitted.

Words of limitation. In a conveyance to a corporation words of limitation are not strictly necessary, as a corporation “never dies,” and accordingly there can be no question of only a life estate passing: see Co. Lit. 9 b, 94 b. S. 51 of the Conv. Act, 1881, does not apply to corporations.

(*e*) The above proviso should be inserted where it is considered important that the general words should be restricted to rights, &c., legally appurtenant to the land.

(*f*) See notes to Prec. XIV., Agreements for Sale, p. 265, *sup.*

[5. THE Company hereby covenants with the Vendor that the Company will make and for ever hereafter maintain, for the accommodation of the adjoining lands of the Vendor, the communications and works mentioned in the Second Schedule hereto.] [Covenant by Company as to accommodation works.]

IN WITNESS, &c.

THE [FIRST] SCHEDULE ABOVE REFERRED TO.

Particulars of documents retained in the custody of the Vendor.

[THE SECOND SCHEDULE ABOVE REFERRED TO.]

Particulars of accommodation works.

## NO. II.

CONVEYANCE *by an INCUMBENT to a RAILWAY COMPANY,*  
*where the PURCHASE-MONEY exceeds £200 (g).*

THIS INDENTURE, made, &c., BETWEEN the Rev. A. B., Parties.  
Rector of the Rectory and Parish Church of —, in the  
County of —, Clerk in Holy Orders (hereinafter called the  
Vendor), of the one part, and the — Railway Company  
(hereinafter called the Company) of the other part :

WHEREAS the Vendor, as the present incumbent of the said Recital of Vendor's title.  
Church and Rectory, is now entitled to the fee simple in possession

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(g) The L. C. C. Act, 1845, s. 7, enables corporations, tenants in tail or for life, and divers other limited owners enumerated therein to sell and convey to the promoters of the undertaking, and provides (s. 9) that in such cases the purchase-money (except where it is fixed by a jury, arbitration, or by a surveyor appointed by two justices under the provisions of the Act) must not be less than shall be determined by two able practical surveyors who are to be nominated by the parties, or, if they cannot agree, by a third surveyor appointed by two justices, and (s. 69) must be paid into Court, or (s. 71), if less than £200, to two trustees to be appointed by the persons entitled to the rents and profits or by persons on their behalf. If the purchase-money does not exceed £20 it is to be paid to the persons entitled to the rents and profits; see also s. 73. Power given by L. C. C. Act to limited owners to convey.

The power of sale given to limited owners by the L. C. C. Act is now seldom exercised by tenants for life or persons having the powers of a tenant for life under the S. L. Acts, because by selling under those Acts the necessity of obtaining the valuation of surveyors and of paying the purchase-money into Court is avoided, see Prec. IV. of this Group, p. 510, *inf.* See Schedules A and B to the L. C. C. Act for statutory forms of conveyances.

free from incumbrances of the hereditaments hereinafter described, which form part of the garden (*h*) of the said Rectory :

AND WHEREAS the Company require and are by the — Railway Act, 19—, and the Acts incorporated therewith (including the Lands Clauses Consolidation Act, 1845), authorised to acquire and hold the hereditaments hereinafter described for the purposes of the said Act of 19— :

Agreement for sale at sum determined by valuation.

AND WHEREAS the Vendor, by virtue of the power for this purpose conferred by the said Act of 1845, has agreed to sell the fee simple of the hereditaments hereinafter described to the Company at the price of £—— (being the sum determined to be the value thereof by C. D., of, &c., and E. F., of, &c., two able practical surveyors nominated by the Vendor and the Company respectively, pursuant to the last-mentioned Act), and which sum is to include compensation for all damage to be sustained by him or his successors in title by reason of the severing of the hereditaments hereinafter described from the remainder of the other lands held with the said Rectory, or otherwise injuriously affecting such other lands by the execution of the powers of the said Act of 19— or any Act incorporated therewith :

Payment into Court of purchase-money.

AND WHEREAS the Company on the — day of — last paid the sum of £——, being such purchase-money as aforesaid, into Court to the credit of “*Ex parte* The — Railway Company, in the matter of the — Railway Act, 19—,” as the Vendor hereby acknowledges (*i*) :

NOW THIS INDENTURE WITNESSETH as follows:—

Conveyance.

1. In pursuance of the said agreement and in consideration of the sum of £—— paid into Court as aforesaid, the Vendor, As Trustee (*h*), and in exercise of the power for this purpose

(*h*) In the text title is made under the L. C. C. Act, 1845. The Glebe Lands Act, 1888, does not authorise the sale of the rectory garden and certain other parts of the holding. In the text the incumbent is treated as having the fee simple vested in him, as he can convey it, but it is a moot point what the exact estate taken is.

(*i*) The usual certificate of payment into Court should be obtained by the company.

Covenants for title on conveyance under L. C. C. Act, 1845.

(*k*) Where sales are made under the L. C. C. Act, 1845, by agreement, it is conceived that the same covenants for title should be given as on an ordinary sale. On the other hand, where there is a compulsory purchase, it would seem that the purchasers can only require a conveyance in the statutory form, see Schedule A to the Act, which contains no covenants for title: Freund and Ware, 2nd ed., 127 and 234, note (*i*). In the case given in the

conferred on him by the Lands Clauses Consolidation Act, 1845, hereby conveys unto the Company :

ALL THAT, &c. (*Form No. 4, Sect. II., sup.*),

Parcels.

To HOLD unto and To THE USE of the Company and their assigns in fee simple. Habendum.

(*Add other clauses as in last Precedent, if required, saying "the Vendor and his successors" in paragraph 3.*)

It is hereby certified, &c. (*Form No. 11, Sect. III., sup., if required.*)

IN WITNESS, &c.

### No. III.

CONVEYANCE *by an INCUMBENT to a RAILWAY COMPANY*  
*where the PURCHASE-MONEY is UNDER £200 (l).*

THIS INDENTURE, made, &c., BETWEEN the Rev. A. B.,  
Rector of the Rectory and Parish Church of —, in the County  
of —, Clerk in Holy Orders (hereinafter called the Vendor), of  
the 1st part, C. D., of, &c., and E. F., of, &c. (hereinafter called  
the Trustees), of the 2nd part, and the — Railway Company  
(hereinafter called the Company), of the 3rd part (*Recitals as in*  
*last Precedent except as to the payment of purchase-money into*  
*Court*) : Parties.  
Recitals.

NOW THIS INDENTURE WITNESSETH as follows :—

1. THE Vendor, with the approval of the Company, hereby  
nominates the Trustees to be the trustees to receive the purchase-  
money. Nomination  
of Trustees.

2. IN consideration of the sum of £— now paid by the  
Company to the Trustees (the receipt of which sum they hereby  
acknowledge), the Vendor, As Trustee (*continue as in last*  
*Precedent and add Form No. 11, Sect. III., sup.*). Conveyance to  
Company.

IN WITNESS, &c.

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text the rector has really a less estate than a tenant for life, as he can be deprived of his living ; hence it is submitted that he should either convey as Trustee, or if he conveys as Beneficial Owner that his covenants should be qualified as in the case of a tenant for life.

(l) See L. C. C. Act, 1845, s. 71.

## No. IV.

CONVEYANCE *by a* TENANT FOR LIFE *to a* RAILWAY COMPANY,  
*under the Powers of the S. L. ACTS (m).*

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*tenant for life*) (hereinafter called the Vendor), of the 1st part, C. D., of, &c., and E. F., of, &c. (hereinafter called the Trustees), of the 2nd part, and the — Railway Company (hereinafter called the Company), of the 3rd part :

Settlement  
 under which  
 Vendor is  
 tenant for life,  
 That land is  
 required by  
 Railway  
 Company.

WHEREAS by an Indenture of Settlement dated the — day of —, and made between (*continue as in Form No. 10, Sect. I., sup.*):

AND WHEREAS the Company require and are by the — Railway Act, 19 —, and the Acts incorporated therewith authorised to acquire and hold the hereditaments hereinafter described for the purposes of the said Act of 19— :

Agreement  
 for sale.

AND WHEREAS the Vendor, as tenant for life in possession under the recited Settlement, has agreed to sell to the Company the hereditaments hereinafter described and the fee simple thereof in possession at the price of £—, which sum is to include compensation for the damage to be sustained by him and his successors in title, owners of the said lands, by reason of the severing of the said lands from the other settled lands, or otherwise injuriously affecting such other lands by the execution of the powers of the said Act of 19— :

NOW THIS INDENTURE WITNESSETH as follows :—

Conveyance.

1. In pursuance of the said agreement and in consideration of the sum of £— now paid by the Company by the direction of the Vendor to the Trustees as such trustees as aforesaid (the receipt of which sum the Trustees hereby acknowledge), the Vendor, in exercise of the power for this purpose vested in him by the Settled Land Acts, 1882 to 1890, and of all other powers, and As Beneficial Owner, hereby conveys unto the Company

Parcels.

ALL THAT, &c. (*Form No. 4, Sect. II., sup.*),

Habendum.

To HOLD unto and To THE USE of the Company in fee simple, discharged from all the limitations, trusts, powers and provisions

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(m) See notes to Prec. II. of this Group, p. 507. In the above Precedent title is made under the S. L. Acts.

of the recited Settlement, and from all estates, interests and charges subsisting or to arise thereunder.

2. PROVIDED ALWAYS, that (*Form No. 1, Sect. III., sup.*).

Proviso qualifying statutory covenants.

(*Add other clauses as in Precedent I. of this Group, p. 505, if required.*)

IN WITNESS, &c.

## No. V.

DEED POLL *by RAILWAY COMPANY for the purpose of VESTING in themselves COMMON LAND free from COMMONABLE AND OTHER RIGHTS (a).*

TO ALL TO WHOM THESE PRESENTS SHALL COME,  
The ——— Railway Company (hereinafter called the Company)  
SEND GREETING this ——— day of ——— 19— :

WHEREAS the Company require and are under the ——— Railway Act and the Acts incorporated therewith (including the Lands Clauses Consolidation Act, 1845) authorised to acquire and hold the land described in the Schedule hereto, part of ——— Common, in the Parish and Manor of ———, in the County of ———, for the purposes of the said Act of 19— :

Recitals that part of common is required for railway,

AND WHEREAS A. B., of, &c., C. D. and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (hereinafter called the Committee), and divers other persons are or claim to be entitled to commonable and other rights on, over, or in respect of the said land (*Recite purchase by Company of rights of lord, advertisement calling meeting, the holding of the meeting, and the resolution appointing a Committee, as in Precedent XVII. of Agreements for Sale, p. 269, sup.*) :

and that certain persons claim commonable rights.

AND WHEREAS the Committee, on behalf of themselves and all other persons entitled to commonable and other rights as aforesaid, have agreed with the Company to accept the sum of £—— as compensation for the extinction of all such commonable and other rights, and the said sum of £—— has accordingly been paid to the said Committee by the Company, as

Agreement for compensation.

(a) See L. C. C. Act, 1845, ss. 99—107; also notes to Prec. XVII., Agreements for Sale, p. 269, *sup.* The deed poll in the text takes effect under s. 107.

For a deed poll vesting the land in the corporation where the owner cannot be found, &c., see Prec. IV. of the next Group, p. 522.

Deed poll where owner cannot be found, &c.

appears by a Memorandum of Agreement bearing even date with these presents :

Declaration by company vesting land in themselves free from commonable rights.

NOW THESE PRESENTS WITNESS that in pursuance of the power for this purpose conferred on them by the Lands Clauses Consolidation Act, 1845, the Company hereby declare that the land described in the Schedule hereto shall henceforth vest in the Company freed and discharged from all commonable and other rights, on, over or in respect of the same.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*To contain particulars of the land acquired.*)

## No. VI.

CONVEYANCE of COPYHOLDS by the TENANT on the ROLLS to a COMPANY under the LANDS CLAUSES CONSOLIDATION ACT, 1845 (o).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and the —— Railway Company (hereinafter called the Company) of the other part :

Conveyance of copyholds under L. C. C. Act, 1845.

(o) In place of this Precedent the form in Schedule A of the L. C. C. Act, 1845, is sometimes used. S. 95 of the L. C. C. Act, 1845, provides (1) that every conveyance of copyholds to the promoters of the undertaking shall be entered on the rolls of the manor; (2) that on payment of the fees which would have been due on a surrender the steward shall make the enrolment; and (3) that every conveyance when enrolled shall have the same effect as if the land were freehold, but until enfranchisement the land shall remain subject to the customary fines, &c. S. 96 provides for the enfranchisement of the land by the promoters within three months after enrolment or one month after possession is taken, whichever first happens. Under s. 97 the lord must enfranchise on payment of the compensation money, and if he fails to do so the promoters can enfranchise themselves by a deed poll. S. 98 provides for the apportionment of customary rents. Though, on enrolment, the land passes as freehold it still remains subject to the customary dues, including fines payable on the deaths of the vendor and his successors before or after enrolment, which must be included in the compensation for enfranchisement: *Lord Leconfield v. L. & N. W. Ry. Co.*, 1907, 1 Ch. 38; 76 L. J. Ch. 33; *D. of Northumberland v. Tyne-mouth Corpn.*, 1909, 2 K. B. 374; 78 L. J. K. B. 767. This Precedent affords an exception to the rule that a common law assurance by a tenant on the rolls gives rise to a forfeiture.

WHEREAS on the — day of — the Vendor was admitted to the copyhold hereditaments hereinafter described To HOLD to the Vendor and his heirs at the will of the lord according to the custom of the Manor of —, in the County of — :

Admission of Vendor.

AND WHEREAS the Company require and are under the — Railway Act, 19—, and the Acts incorporated therewith (including the Lands Clauses Consolidation Act, 1845) authorised to acquire and hold the said hereditaments for the purposes of the said Act of 19— :

That Company requires land for purposes of the Special Act.

AND WHEREAS the Vendor has agreed to sell to the Company the hereditaments hereinafter described free from incumbrances for an estate of inheritance according to the custom of the said Manor at the price of £—, which sum shall include all compensation for severance, damage, or otherwise :

Agreement for sale.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £— now paid by the Company to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner and pursuant to the Lands Clauses Consolidation Act, 1845, hereby conveys unto the Company

Statutory conveyance of copyholds.

ALL THOSE, &c. (*Form No. 3, Sect. II., sup. ; the minerals will not pass, being vested in the lord of the Manor*).

Parcels.

To HOLD unto the Company and their assigns at the will of the lord according to the custom of the said Manor at and under the rents, fines, suits and services therefor due and of right accustomed (*p*), and so that upon enrolment of these presents on the court rolls of the said Manor the said hereditaments shall forthwith become and devolve as freehold hereditaments.

Habendum.

(*Add acknowledgment and undertaking as to stewards' copies and documents, Form No. 6, Sect. III., sup. ; also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

(*p*) It is conceived that it is correct to use the usual words applicable to a covenant to surrender, as the land does not become freehold until after enrolment.

## No. VII.

CONVEYANCE *by a RAILWAY COMPANY of* SUPERFLUOUS LANDS (*q*).

Parties.

THIS INDENTURE, made, &c., BETWEEN the — Railway Company (hereinafter called the Company), of the one part, and A. B., of, &c. (hereinafter called the Purchaser), of the other part:

Superfluous lands to be sold within ten years, or in default to vest in owners of adjoining lands.

(*q*) With respect to lands acquired by the promoters of the undertaking which shall not be required for the purposes thereof, s. 127 of the L. C. C. Act, 1845, provides that within the period prescribed by the special Act, or, if no period be prescribed, then within ten years after the expiration of the time limited by the special Act for the completion of the works, the promoters shall absolutely sell and dispose of such superfluous lands, and that in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

Right of pre-emption, &c. as to lands not in a town or built upon, &c.

S. 128 provides that before the promoters of the undertaking dispose of any such superfluous lands, they must, unless the lands be situated within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot, after diligent inquiry, be found, then the like offer must be made to the person or the several persons whose lands immediately adjoin the lands proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person is entitled to such right of pre-emption, the offer is to be made to such persons in succession in such order as the promoters think fit.

Right of pre-emption to be claimed within six weeks.

Under s. 129 the right of pre-emption must be claimed within six weeks after the offer, and a declaration made before a justice by some disinterested person (stating that the offer was made and refused, or not accepted within the six weeks; or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not, after diligent inquiry, be found, or were not capable of contracting) is made sufficient evidence of the facts therein stated.

Evidence of refusal, &c.

Points decided as to superfluous lands.

The following points have been decided with respect to superfluous lands:—(1) That the question whether land is to be deemed superfluous within the meaning of s. 127 must be determined at the expiration of the ten years. If it is not superfluous then, but becomes so afterwards, the section does not apply: *G. W. Ry. Co. v. May* (1874), L. R. 7 H. L. 283; 43 L. J. Q. B. 233. (2) That land is superfluous if, at the end of the ten years, it is not then wanted for the purpose of the railway, and there are no purposes in connexion with the railway for which it can reasonably be expected that it will be wanted afterwards: *Hooper v. Bourne* (1880), 5 A. C. 1;

WHEREAS under the powers of the ——— Railway Act, 18—, the Company some time since purchased from X. Y., of, &c., certain lands, of which the lands hereinafter described form part, and the same were accordingly conveyed to the Company by an Indenture dated the ——— day of ———, and made between the said X. Y. of the one part and the Company of the other part:

Recite conveyance to Railway Company.

AND WHEREAS the ——— day of ——— was the time limited by the said Act for the completion of the works thereby authorised:

Day fixed for completion of works.

AND WHEREAS the hereditaments hereinafter described are not required for the purposes of the said Act:

That land is not required by Company.

AND WHEREAS the said X. Y. died (*r*) on the ——— day of ——— a widower intestate, leaving C. Y., of, &c., and E. Y., of, &c., his co-heiresses at law, and the said C. Y. and E. Y. are the persons now entitled to the lands from which the hereditaments hereinafter described were severed, and are also owners of the lands immediately adjoining the hereditaments hereinafter described:

Title of owners of adjoining lands.

49 L. J. Q. B. 370; *Betts v. G. E. Ry.* (1878), 3 Ex. D. 182; aff. by H. L., 49 L. J. Ex. 197; 28 W. R. 50; as to what is sufficient evidence that the land has become superfluous, see *Hobbs v. Mid. Ry.* (1882), 20 Ch. D. 418; *Dunhill v. N. E. Ry.*, 1896, 1 Ch. 121; 65 L. J. Ch. 178; it is a question of mixed law and fact: *Macfie v. Cullander, &c. Ry. Co.*, 1898, A. C. 270; 67 L. J. P. C. 58. (3) That in order to prevent superfluous land from vesting in the adjoining owners, the sale must be absolute, without any reservation of interest to the company: *L. & S. W. Ry. Co. v. Gomm* (1882), 20 Ch. D. 562; 51 L. J. Ch. 530. And where a railway company sold superfluous land with a covenant to resell certain portions to them, if required, it was held that the sale was void as regards those portions, but valid as to the remainder: *Ray v. Walker*, 1892, 2 Q. B. 88; 61 L. J. Q. B. 718. (4) That where there are several properties adjoining the superfluous land, it should be divided among the several owners in proportion to the frontage of each: *Moody v. Corbett* (1866), L. R. 1 Q. B. 510; 35 L. J. Q. B. 161; but compare *Smith v. S.* (1868), L. R. 3 Ex. at p. 287. (5) That the surface over a tunnel is not superfluous land: *Re Met. Ry. Co. and Cosh* (1880), 13 Ch. D. 607; 49 L. J. Ch. 277; *Mid. Ry. Co. v. Wright*, 1901, 1 Ch. at p. 743; *Re Lancs. and Yorks. Ry. and E. of Derby* (1909), 100 L. T. 44. (6) That a sale of superfluous land may be made subject to restrictive covenants as to user: *Re Higgins and Hitchman* (1882), 21 Ch. D. 95; 51 L. J. Ch. 772; but see *L. & S. W. Ry. Co. v. Gomm, sup.* And see generally the notes on these sections in Browne and Theobald, 3rd ed., pp. 231 *et seq.*

(*r*) If X. Y. died after 1897 the adjoining freehold land would vest in the administrator, and the conveyance by him to the co-heiresses should be recited.

Declaration of  
offer to sell  
to owners  
and non-  
acceptance.

AND WHEREAS N. O., of, &c., a person not interested in the matter in question, has made a declaration in writing, dated the — day of —, before P. Q., of, &c., a justice of the peace for the County of —, not interested in the said matter, and has thereby declared that an offer to sell the hereditaments herein-after described was duly made by the Company to the said C. Y. and E. Y. on the — day of —, and that such offer was not accepted by them or either of them within six weeks of making the same :

Agreement  
for sale.

AND WHEREAS since the date of the said declaration the Company have agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £— :

NOW THIS INDENTURE WITNESSETH as follows:—

Conveyance.

1. IN pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Company (*the receipt, &c.*), the Company hereby grants (s) unto the Purchaser

ALL, &c. (*see Forms in Sect. II., sup.*) [save and except all such mines and minerals under the said lands as by virtue of the Railways Clauses Consolidation Act, 1845, were excepted out of the conveyance of the said lands to the Company (t)],

To hold unto and To the use of the Purchaser in fee simple.

2. THE Company hereby acknowledge, &c. (*acknowledgment and undertaking as to documents, Form No. 6, Sect. III., sup. Add Form No. 11, Sect. III., if required.*)

IN WITNESS whereof the Company have caused their common seal to be hereunto affixed, and the Purchaser has hereunto set his hand and seal the day and year first above written.

The common seal of the — Railway Company was affixed to the within-written Indenture in the presence of us :

E. F., } Directors.  
G. H., }  
I. K., Secretary.

When "grant"  
operates  
as express  
covenants.

(s) By the L. C. C. Act, 1845, s. 132, it is provided, that in conveyances of land by the promoters of the undertaking the word "grant" shall operate as express covenants for title and for further assurance.

(t) This exception will be omitted if the company expressly purchased the mines and minerals.

## No. VIII.

CONVEYANCE of FREEHOLDS *belonging to a LIMITED COMPANY on a sale by the LIQUIDATORS (u).*

THIS INDENTURE, made, &c., BETWEEN the — Company, Parties.  
Limited, in liquidation (hereinafter called the Company), and  
A. B., of, &c., and C. D., of, &c., liquidators of the Company,  
(hereinafter called the Vendors), of the one part, and E. F., of, &c.  
(hereinafter called the Purchaser), of the other part :

WHEREAS at the date of the confirmation of the resolution Seisin of  
hereinafter mentioned the hereditaments hereinafter described Company.  
were and still are vested in the Company in fee simple free from  
incumbrances :

AND WHEREAS by special resolution of the Company, duly Special reso-  
passed and confirmed at extraordinary meetings held respectively lution for  
on the — day of — and the — day of —, it was winding-up,  
resolved that the Company be wound up voluntarily, and that and appoint-  
the Vendors be and they were accordingly appointed liquidators ment of liqui-  
for the purpose of such winding up : dators.

AND WHEREAS the Vendors, for and on behalf of the Company, Agreement  
have agreed to sell the hereditaments hereinafter described for sale.  
and the fee simple thereof in possession free from incumbrances to  
the Purchaser at the price of £— :

NOW THIS INDENTURE WITNESSETH that in pursuance Conveyance.  
of the said agreement and in consideration of the sum of £—  
now paid by the Purchaser to the Vendors as such liquidators  
as aforesaid (the receipt of which sum the Vendors and the  
Company hereby acknowledge), the Company, by the direction  
of the Vendors as such liquidators as aforesaid (x), hereby

(u) The Companies (Consolidation) Act, 1908, s. 186, authorises the Conveyance by  
liquidators in a voluntary winding-up to exercise, without the sanction of liquidators.  
the Court, all the powers conferred on the official liquidator by the same  
Act. Under s. 151 the official liquidator can, with the sanction of the Court,  
sell the real and personal estate of the company, execute deeds, receipts, &c.,  
and for that purpose use the company's seal. The liquidation does not take  
the legal estate out of the company : *Re Oriental, &c. Co.* (1874), L. R. 9 Ch.  
at p. 560.

(x) On a sale by liquidators it is usual to provide that covenants for title  
shall not be given. Apart from condition it is conceived that the company  
should convey "as beneficial owners."

[As Beneficial Owners] convey and the Vendors, As Trustees, hereby convey and confirm unto the Purchaser

ALL, &c. (*see Forms in Sect. II., sup.*),

Habendum.

To HOLD unto and To THE USE of the Purchaser in fee simple.

(*Acknowledgment as to documents, Form No. 6, Sect. III., sup., by the Vendors, and Form No. 11, Sect. III., if required.*)

IN WITNESS whereof the Vendors, as such liquidators as aforesaid, have caused the common seal of the Company to be affixed to these presents, and the Vendors have hereunto set their hands and seals, the day and year first above written.

#### GROUP B.—CONVEYANCES TO AND BY MUNICIPAL AUTHORITIES (*y*).

##### No. I.

#### CONVEYANCE *of* LAND *to a* LOCAL EDUCATION AUTHORITY *for a* SCHOOL.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and the — County Council (hereinafter called the Council) [*or the Mayor, Aldermen, and Burgesses (z) of the Borough of —, acting by the Council (hereinafter called the Corporation)*] [*or the Urban District Council of — (hereinafter called the Council)*] (*purchaser*) of the other part :

Recital of Vendor's seisin, and agreement by education authority to purchase land for school.

WHEREAS the Vendor is now seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described :

AND WHEREAS the Council [the Corporation], acting as the Local Education Authority and being desirous of acquiring the said hereditaments as a site for a school, have, under the powers conferred on them by the Education Acts, 1870 to 1909, agreed with the Vendor for the purchase thereof at the price of £— :

Duties on land values in case of rating authorities.

(*y*) "Rating authorities," including a statutory combination of two or more "rating authorities," are exempt from all the duties on land values: Fin. (1909-10) Act, 1910, s. 35. On a sale, lease, or periodical valuation increment value duty is to be deemed to have been paid—*i.e.*, a purchaser from a rating authority will only be liable when he sells or leases in respect of the benefit accruing since his purchase. For definition of "rating authority," see sub-s. 2.

(*z*) The land must be conveyed to the corporation: *Re Leeds Institute*, 1909, 1 Ch. 500; 78 L. J. Ch. 321.

NOW THIS INDENTURE WITNESSETH that in pursuance Conveyance.  
of the said agreement and in consideration of the sum of £——  
now paid by the Council [*or Corporation*] to the Vendor (the  
receipt of which sum the Vendor hereby acknowledges) (*a*), the  
Vendor, As Beneficial Owner, hereby conveys unto the Council  
[*or Corporation*]

ALL THAT, &c. (*see Forms in Sect. II., sup.*),

To HOLD unto and To THE USE of the Council [*or Corporation*]  
and their assigns in fee simple (*b*).

(*Acknowledgment, &c., as to documents, Form No. 6, Sect. III.;  
also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

## No. II.

### CONVEYANCE of LAND to a PARISH COUNCIL for a RECREATION GROUND (*c*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (herein- Parties,  
after called the Vendor), of the one part, and the Parish Council  
of ——, in the County of —— (hereinafter called the Council),  
of the other part :

WHEREAS the Vendor is now seised in fee simple in possession Recital of  
Vendor's  
seisin.  
free from incumbrances of the hereditaments hereinafter  
described :

(*a*) If the vendor is under a disability (see L. C. C. Act, 1845, s. 69), and  
if the purchase-money amounts to £200, this sum must be paid into Court,  
unless the sale is made by the tenant for life under the powers of the S. L.  
Act, 1882, in which case see s. 21 (ix.), and Wolst. Conv. Acts, 9th ed., 368.

A corporation cannot be seised "to the use" of another; hence there can  
be no resulting use. In conveyances to corporations the words "to the use  
of" in the habendum, though usual, may be omitted. Statute of  
Uses as regards  
corporations.

(*b*) If such words as "for the purposes only of a school" are added, the User for other  
than educa-  
tional pur-  
poses.  
purchasing authority can nevertheless, with the consent of the Board of  
Education and the approval of the Local Government Board, use the land  
for other purposes: Education (Administrative Provisions) Act, 1909, s. 5.  
A gift of land under the School Sites Act, 1841, reverts to the donor if the  
purposes for which it was given fail: *A.-G. v. Shadwell*, 1910, 1 Ch. 92;  
79 L. J. Ch. 113.

Where the purchasing authority takes a conveyance with notice of Restrictive  
covenants.  
restrictive covenants the covenantee cannot maintain an action for breach;  
his only remedy is compensation under the L. C. C. Act, 1845, s. 68: *Kirby  
v. Harrogate School Board*, 1896, 1 Ch. 437; 65 L. J. Ch. 376; and see *Long  
Eaton, &c. Co. v. Midland Ry.*, 1902, 2 K. B. 574; 71 L. J. K. B. 837.

(*c*) Local Gov. Act, 1894, s. 8 (*b*).

Agreement by  
Parish Council  
with consent  
of parish  
meeting and  
County Council  
to purchase.

AND WHEREAS the Council, being desirous of providing a recreation ground for the said parish, have, with the consent of a parish meeting held on the — day of —, 19—, signified by a resolution passed at that meeting and with the consent also of the — County Council, signified by an Order of the said Council dated the — day of —, 19— (*d*), agreed with the Vendor to purchase the said hereditaments for the purpose aforesaid at the price of £—:

Conveyance.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £— now paid by the Council to the Vendor (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby conveys unto the Council ALL, &c. (*see Forms, Sect. II., sup.*),

Parcels.

Habendum.

To HOLD unto and To THE USE of the Council and their assigns in fee simple.

(*Acknowledgment, &c., as to documents, Form No. 6, Sect. III.; also Form No. 11, Sect. III., if necessary.*)

IN WITNESS whereof the Vendor has hereunto set his hand and seal, and C. D., of, &c., the chairman presiding at a meeting of the said Parish Council, and E. F., of, &c., and G. H., of, &c., two other members of the said Parish Council, have, at the said meeting for and on behalf of the said Parish Council, set their hands and seals the day and year first above written (*e*).

Signed, sealed, and delivered by the above-named A. B. in the presence of —.

Signed, sealed, and delivered at a meeting of the said Parish Council held on the — day of —, 19—, by the above-named C. D., the

Loans to  
Parish  
Council.

(*d*) It is assumed that the purchase-money will have to be raised by a loan. The Local Gov. Act, 1894, s. 11 (1), provides that the parish council may not, without the consent of a parish meeting, incur expenses involving a rate exceeding threepence in the pound or which will involve a loan, and (2) that the approval of the county council must be obtained where the parish council incur any expense which will involve a loan. S. 12 (2) authorises the county council to lend money to the parish council, without the sanction of the Local Government Board, for purchasing land, &c. As to gifts for the purpose of recreation grounds, see the Recreation Grounds Act, 1859. As to the transfer of recreation grounds from trustees to parish councils, see Local Gov. Act, 1894, s. 14; Open Spaces Act, 1906, s. 3.

(*e*) Local Gov. Act, 1894, s. 3 (9).

chairman presiding at the said meeting, and  
the above-named E. F. and G. H., members of  
the said Council, in the presence of —, Clerk to the said Parish Council.

## No. III.

CONVEYANCE *of* FREEHOLDS *to a* COUNTY COUNCIL.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (herein- Parties.  
after called the Vendor), of the one part, and the — County  
Council (hereinafter called the Council) of the other part :

WHEREAS the Vendor is seised in fee simple in possession free Seisin of  
from incumbrances of the hereditaments hereinafter described :

AND WHEREAS the said hereditaments are required by the Power of  
Council to  
Council for the purposes of the — County Council [General acquire the  
Powers] Act, 19—, and the Council are under that Act and the land.  
Acts incorporated therewith (including the Lands Clauses Con-  
solidation Act, 1845) authorised to take and use the said here-  
ditaments for the purposes aforesaid :

AND WHEREAS the Council have agreed with the Vendor to Agreement for  
purchase the said hereditaments for an estate in fee simple in purchase.  
possession free from incumbrances at the price of £—, which  
sum it was agreed should include compensation for severance,  
damages, or otherwise :

NOW THIS INDENTURE WITNESSETH that in pursuance Conveyance.  
of the said agreement and in consideration of the sum of £—  
now paid by the Council to the Vendor (*the receipt, &c.*),  
the Vendor, As Beneficial Owner, hereby conveys unto the  
Council

ALL THAT (*Form No. 3, Sect. II., sup.*), Parcels.

To HOLD unto and To THE USE of the Council and their assigns Habendum.  
in fee simple.

(*Add acknowledgment as to production of documents. Form  
No. 6, Sect. III.; also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

## No. IV.

DEED POLL *by a COUNTY COUNCIL under the LANDS CLAUSES CONSOLIDATION ACT, 1845, where the OWNER of the LAND cannot be found (f).*

TO ALL TO WHOM THESE PRESENTS SHALL COME the  
— County Council (hereinafter called the Council) SEND  
GREETING this — day of — :

Recital of title. WHEREAS (*Recite title of X. so far as known*):

Cases where promoters can vest the land in themselves by deed poll.

(f) See L. C. C. Act, ss. 76, 77, which enable the promoters to acquire the land in the manner shown in the text. S. 76 applies to the following cases: (1) If the owner refuses to accept the purchase-money agreed or awarded; (2) If the owner neglects or fails to make out a title to the property to the satisfaction of the promoters; (3) If the owner refuses to convey; or (4) If the owner is absent from the kingdom, or cannot after diligent inquiry be found, or fails to appear before a jury. A person who admits that he has no title to the land cannot be an "owner" within s. 76; he cannot fix the price adversely to the true owner: *Wells v. Chelmsford L. B.* (1880), 15 Ch. D. 108; 49 L. J. Ch. 827. The machinery of the two sections is as follows:— (1) The purchase-money agreed or awarded must be paid into Court to the credit of the parties interested in the property "describing them so far as the promoters can": s. 76 (V.-C. Wood appears to have read the words in inverted commas as meaning that the persons were to be described, see, *Douglass v. L. & N. W. Ry. Co.* (1857), 3 K. & J. at p. 179; and see *Wells v. Chelmsford L. B.*, *sup.*). (2) Upon payment of the purchase-money into Court a receipt is given to the promoters stating for what and for whose use the payment is made; (3) The promoters may then execute a deed poll containing a description of the property in respect of which the deposit is made and declaring the circumstances under which and the names of the parties to whose credit the deposit is made; (4) The deed must be stamped as a conveyance on sale; and (5) Thereupon all the estate and interest in such property of the parties for whose use and in respect whereof the deposit is made vests absolutely in the promoters, and as against such parties the promoters are entitled to immediate possession. It will be seen that the credit account should be worded as widely as possible, see, also s. 75.

As such a deed poll is executed solely under the statutory power and contains no covenants for title, the above course should only be resorted to where all other methods fail. If any persons are found with an interest which they are willing to convey they should be asked to do so and a deed poll should be executed as well, see, *Friend and Ware*, 2nd ed., 252, note (a). Where a person refuses to treat, &c., all the steps taken, *e.g.*, notice to treat, notice to go before a jury, &c., should be recited in the deed poll.

In the above cases the prudent course is to always have the purchase-money fixed under the provisions of the Act. If it is merely agreed it would seem that only the party to the agreement will be bound: *Ex parte Winder* (1877), 6 Ch. D. 696; 46 L. J. Ch. 572.

AND WHEREAS the Council require and are by the — Act, 19—, and the Acts incorporated therewith (including the Lands Clauses Consolidation Act, 1845) authorised to acquire the hereditaments described in the Schedule hereto for the purposes of the said Act of 19— :

Recital of power of Council to acquire the land.

AND WHEREAS the said X. (if living) cannot, after diligent inquiry, be found, nor can the date of his death (if he is dead) be ascertained :

That X. cannot be found.

AND WHEREAS it has not been shown to the satisfaction of the Council who is or are the person or persons interested in the hereditaments described in the Schedule hereto as heir of the said X. (if he is dead) or as otherwise deriving title under him :

That Council not satisfied as to the persons entitled.

AND WHEREAS the sum of £—— has been determined by valuation in manner prescribed by the fifty-eighth and fifty-ninth sections of the said Act of 1845 to be the purchase-money payable by the Council for the purchase of the hereditaments described in the Schedule hereto :

Valuation of land.

And WHEREAS on the — day of — the Council, in pursuance of the seventy-sixth section of the Lands Clauses Consolidation Act, 1845, paid the sum of £—— into the Bank of England with the privity of His Majesty's Paymaster-General to the credit of "*Ex parte* the County Council of the Administrative County of—, The account of X. (if living) or his heir or other the persons deriving title from him, the persons interested in, &c." (*add short description of the land*) :

Payment into Court.

NOW THESE PRESENTS WITNESS that the Council, pursuant to the power for this purpose conferred on them by the seventy-seventh section of the Lands Clauses Consolidation Act, 1845, and of every other power enabling them, hereby declare that the hereditaments in respect whereof the deposit in manner aforesaid of the said sum of £—— was made are the hereditaments described in the Schedule hereto, and that such deposit was made to the credit of the said X. (if living) or his heir or other the persons deriving title under him under the circumstances hereinbefore appearing by reason of the said X. being unable to be found.

Declaration by Council.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*To contain particulars of the land acquired, see Form No. 3, Sect. III., sup.*)

## No. V.

CONVEYANCE *on SALE to a MUNICIPAL CORPORATION or an URBAN DISTRICT COUNCIL purchasing under the PUBLIC HEALTH ACT, 1875, or other STATUTORY AUTHORITY.*

|   |   |
|---|---|
| Parties.  | THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and the Mayor, Aldermen, and Burgesses of the Borough of —, acting by the Council as the Urban Sanitary Authority for the said Borough (hereinafter called the Corporation) [ <i>or the Urban District Council of —, in the County of — (hereinafter called the Council)</i> ] ( <i>purchasers</i> ) of the other part :  |
| Recital of Vendor's seisin, and agreement for purchase.                                 | <p>WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described :</p> <p>AND WHEREAS the Corporation [<i>or the Council</i>] have under the powers of the Public Health Act, 1875, agreed with the Vendor to purchase the said hereditaments and the fee simple thereof in possession free from incumbrances for the purposes authorised by section — of the said Act at the price of £— :</p> <p>NOW THIS INDENTURE WITNESSETH as follows :—</p>                                 |
| Conveyance.   | 1. In pursuance of the said agreement and in consideration of the sum of £— now paid by the Corporation [ <i>or the Council</i> ] to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Corporation [ <i>or the Council</i> ]   |
| Parcels.  | <p>ALL THAT, &amp;c. (<i>see Forms in Sect. II., sup.</i>).</p> <p>To HOLD unto and To THE USE of the Corporation [<i>or the Council</i>] and their assigns in fee simple.</p>  |
| Provision that land not required may be used for other authorised purpose ( <i>g</i> ). | 2. It is hereby declared, that if any part of the hereditaments hereby conveyed shall not be required for the purpose aforesaid, the same may by the direction or with the sanction of the Local Government Board be used for any other purpose for which the Corporation [ <i>or the Council</i> ] are or hereafter shall be authorised by statute to acquire land [ <i>Add, if so agreed, except that no part thereof shall be used as the site of a hospital for infectious diseases, or for any purpose or in any manner which may be a</i> |
| [With certain exceptions.]  |   |

(*g*) See notes to Prec. XIX. of Agreements for Sale, p. 273, *sup.*

nuisance or annoyance to the Vendor or the persons deriving title under him as owner or owners of any property adjoining or near thereto without his or their consent in writing].

3. (*Acknowledgment and undertaking as to documents, Form No. 6, Sect. III.; also Form No. 11, Sect. III., if necessary.*)

IN WITNESS, &c.

No. VI.

CONVEYANCE *on sale by an URBAN DISTRICT COUNCIL under the powers of the PRIVATE STREET WORKS ACT, 1892 (h), where the OWNER makes default in payment of his share of the expenses of the IMPROVEMENT.*

THIS INDENTURE, made, &c., BETWEEN the Urban District Council of —, in the County of — (hereinafter called the Council), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Parties.

(h) This Act (which is to be construed as one with the Public Health Acts) enables an urban authority which has adopted it (see ss. 2 and 3) to execute improvement works in any private street, with a view to its being declared a highway repairable by the inhabitants at large, and to apportion the expenses among the several premises fronting, adjoining, or abutting on the street, see *Twickenham U. D. C. v. Manton*, 1899, 2 Ch. 603; 68 L. J. Ch. 601. The share of expenses payable in respect of each property is charged on that property as from the date of the completion of the works; it makes no difference if the ownership has changed after service of the notice: *East Ham U. D. C. v. Aylett*, 1905, 2 K. B. 22; 74 L. J. K. B. 471; and the urban authority have, under s. 13 of the Act, for the recovery of that sum and interest all the powers and remedies of the Conv. Act, 1881, as if they were mortgagees having powers of sale and leasing and of appointing a receiver.

Sale under Private Street Works Act, 1892.

It had been decided that the charge is on the premises, and not on any particular estate or interest therein: *Corpus of Birmingham v. Baker* (1881), 17 Ch. D. 782; *Re Pizzi*, 1907, 1 Ch. 67; 76 L. J. Ch. 87, from which it seems to follow that the sale should be of the fee simple, even though the present owner, as defined by s. 4 of the P. H. Act, 1875 (which definition is incorporated by s. 5 of the Private Street Works Act, 1892), may have only a leasehold interest. (As between a lessor and a lessee who covenanted in his lease to pay all rates, taxes, outgoings, &c., the lessee is liable for the cost of paving works: *Greaves v. Whitmarsh*, 1906, 2 K. B. 340; 75 L. J. K. B. 633.) But if the property is subject to a restrictive covenant entered into with the owner of adjoining property, the sale will be subject to such covenant: *Guardians of Tendring Union v. Downton*, 1891, 3 Ch. 265; 61 L. J. Ch. 82.

Charge for share of expenses is on the fee simple.

Recital of  
resolution  
adopting Act.

WHEREAS at a meeting of the Council held on the — day of —, 18—, it was resolved that the Council should adopt the Private Street Works Act, 1892, and that the same should come into operation within the district at the end of one calendar month after the publication of the advertisement of the resolution, and the said resolution was duly published by advertisement and otherwise as required by the said Act (i) :

Resolution to  
execute works.

AND WHEREAS at a meeting of the Council held on the — day of —, 19—, it was resolved to sewer, level, pave, flag and channel a certain private street, known as —, under the provisions of the said Act :

That A. B. is  
owner of  
premises  
abutting on  
street.

AND WHEREAS the premises hereinafter described front to and abut on the said street, and at the date of the last-mentioned resolution A. B., of, &c., was the owner of the premises within the meaning of the said Act :

Approval of  
specifications,  
&c.

AND WHEREAS a specification of the works referred to in the said resolution with plans and sections thereof, an estimate of the probable expenses of the works, and a provisional apportionment

The title to  
be shown by  
authority  
selling.

(i) With regard to the title, the council should furnish to the purchaser an abstract of title setting out the resolutions and facts recited in the above Precedent, and the same should be verified as to the facts generally by the statutory declaration of the clerk, and as to the resolutions by the production of the minute-book : P. II. Act, 1875, Sch. I., r. 10. For form of declaration, see next Precedent.

Evidence must also be furnished that the person on whom the notices required by the Act were served was "the owner" at the time of such service. If the property was in the occupation of a tenant at rack-rent, it will be sufficient to prove that the person so served was in actual receipt of the rent, and no further proof of his title can be required. If the property was vacant, it will be necessary to show that the person served as owner would have been entitled to the rack-rent, had it been let at a rack-rent, which would involve some evidence of title, see, P. II. Act, 1875, s. 4, under definition of "owner." In the case of property incapable by law of being let at a rack-rent, *e.g.*, a church or a burial ground, there can be no owner, and therefore no charge under the Act, see, *Hornsey D. C. v. Smith*, 1897, 1 Ch. 843 ; 66 L. J. Ch. 476, see, also *L. C. C. v. Wandsworth Borough Council*, 1903, 1 K. B. 797 ; 72 L. J. K. B. 399 ; *Hampstead Corpn. v. Mid. Ry. Co.*, 1905, 1 K. B. 538 ; 74 L. J. K. B. 431.

If the validity of the charge on the property is disputed by any person interested, the council should institute an action in the High Court, asking that the sum claimed to be due may be declared to be a charge on the property, and for a sale, see, *West Ham Corpn. v. Sharp*, 1907, 1 K. B. 445 ; 76 L. J. K. B. 307.

of the estimated expenses among the premises liable to be charged therewith under the said Act (including the premises hereinafter described) were prepared by X. Y., the surveyor of the Council, and submitted by him to the Council, and the same were approved by the Council by a resolution passed at a meeting held on the — day of —, 19— :

AND WHEREAS the last-mentioned resolution was published in the manner prescribed in Part II. (*k*) of the said Act, and copies thereof were served on the owners of the premises shown as liable to be charged in the provisional apportionment (including the said A. B.) within seven days after the date of the first publication :

Publication of resolution,  
and service on owners.

AND WHEREAS during one month from the date of the last-mentioned resolution [copies certified by the Council's surveyor of] the approved specification, plans, sections, estimate and provisional apportionment were kept deposited at the Council's offices, and were open to inspection at all reasonable times, and during the said month no objection was made to the proposals of the Council under section seven of the said Act (*l*) :

Deposit of specification, &c., at office for inspection.

AND WHEREAS, the said works having been completed and the expenses thereof ascertained, the surveyor of the Council made a final apportionment dated the — day of —, 19—, by dividing the expenses in the same proportions in which the same were divided in the provisional apportionment, and the sum charged by the final apportionment on the premises hereinafter described was £— :

Final apportionment.

AND WHEREAS a notice in writing of the final apportionment was served on the owners of the premises affected thereby as required by the said Act, and in particular such notice was served on the said A. B. on the — day of —, 19— :

Service of notice thereof on owners.

AND WHEREAS no objection was made to the final apportionment by the owner of any premises charged with any expenses thereunder (*m*) :

No objection made.

(*k*) *I.e.*, once in each of two successive weeks in a local newspaper and in or near the street to which the resolution relates at least once in each of three successive weeks.

(*l*) This section gives the owner power to object on the grounds mentioned in the section.

(*m*) See s. 12 as to objections within one month of notice of the final apportionment.

That whole of  
sum remains  
unpaid.

AND WHEREAS the whole of the said sum of £—— charged as aforesaid on the premises hereinafter described still remains unpaid with interest thereon at the rate of £4 per cent. per annum from the date of the said final apportionment:

Agreement  
for sale.

AND WHEREAS under the power of sale conferred on the Council for the recovery of the said sum and interest by the joint operation of section thirteen of the said Act and of section nineteen (*n*) of the Conveyancing and Law of Property Act, 1881, the Council have agreed to sell to the Purchaser the fee simple of the premises hereinafter described free from incumbrances at the price of £——:

NOW THIS INDENTURE WITNESSETH as follows:—

Conveyance.

1. In pursuance of the said Acts and of the said agreement, and in consideration of the sum of £—— now paid by the Purchaser to the account of the Council at the —— Bank (the receipt whereof the Council hereby acknowledge) [*or* paid by the Purchaser to the treasurer of the Council as appears by the receipt of the said treasurer indorsed hereon, and which payment the Council hereby acknowledge], the Council, As Mortgagees, hereby convey unto the Purchaser

Parcels.

ALL, &c. (*see Forms in Sect. II., sup.*),

To HOLD unto and To THE USE of the Purchaser in fee simple.

Acknowledg-  
ment and  
undertaking  
as to minute-  
book.

2. THE Council hereby acknowledge the right of the Purchaser to production and delivery of copies of the minute-books of the Council so far as they record the resolutions hereinbefore recited, and hereby undertake for the safe custody thereof.

IN WITNESS, &c.

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(*n*) It is conceived that for the purposes of s. 19 of the Conv. Act, 1881, the "mortgage money" will be deemed to have become due at the date of the final apportionment or at the expiration of one month from that date. But before selling, the council must give the notice required by s. 20 (1) of the same Act, and the sale must not be made until the expiration of three months after such notice: *Barker v. Illingworth*, 1908, 2 Ch. 20; 77 L. J. Ch. 581. The purchaser, however, is not bound to see to this.

## No. VII.

STATUTORY DECLARATION *of the Clerk to the Urban*  
 DISTRICT COUNCIL *to accompany the last PRECEDENT.*

I, N. O., of, &c. (*Clerk to the Council*), do solemnly and sincerely declare as follows :—

1. I AM the duly appointed Clerk to the Urban District Council for —, in the County of —, and I have the custody of the books of the said Council. That declarant is Clerk to Council,

2. I WAS present at a meeting of the said Council, held on the — day of —, 18—, when the following resolution was passed (*set out resolution adopting Private Street Works Act, 1892*). proves the passing of the resolutions,

3. I WAS present, &c. (*as above, setting out resolution to do works in — Street*).

4. I WAS present, &c. (*as above, setting out resolution adopting specification and plans, &c., prepared by surveyor*).

5. THE last-mentioned resolution was published in the manner prescribed in Part II. of the said Act, and copies thereof were served on all the owners of the premises shown as liable to be charged in the said provisional apportionment. and publication.

6. THE premises shown as liable to be charged included a messuage and premises abutting on the said street, and described as, &c. (*describe premises*).

7. AT the date of the provisional apportionment A. B., of, &c., was the person receiving the rack-rent of the premises, and a copy of the said resolution was served on him by a prepaid letter put into the post on the — day of — and addressed to, &c. (*state address*). Service of notice of resolution.

8. THE said specification, plans, sections, estimate and provisional apportionment [*or copies certified by the Council's surveyor of the said specification, &c.*] were kept deposited at the Council's offices for one calendar month, namely, from the — day of — to the — day of —, 19—, and were open for inspection at all reasonable times. During the said month no objection was made thereto under section seven of the said Act. Deposit of plans, &c.

9. THE final apportionment of the said expenses was made by the said surveyor on the — day of —, and the sum charged thereby on the premises was £—. Final apportionment.

Service of  
notice of final  
apportion-  
ment.

10. At the date of the completion of the works, and also at the date of the said final apportionment, the said A. B. was still in receipt of the rack-rent of the said premises, and a notice in writing of the said final apportionment was served on him by a prepaid letter put into the post on the — day of — and addressed to, &c. (*state address*).

11. No objection was made to the said final apportionment under section twelve of the said Act.

Notice to  
owner requir-  
ing payment.

12. On the — day of —, 19—, I, on behalf of the said Council, served on the said A. B. a notice in writing requiring immediate payment of the said sum of £— with interest thereon at the rate of £4 per cent. per annum from the date of the said final apportionment. Such notice was served by, &c. (*state mode of service*).

Default.

13. No part of the said sum of £— has been paid to the said Council, and the same with interest thereon still remains owing.

14. I WAS present at, &c. (*meeting of Council when resolution was passed to put up the property by public auction*).

Sale.

15. THE said premises were accordingly, &c. (*state sale by auction, and that C. D., as highest bidder, was declared purchaser*).

Resolution to  
affix seal to  
conveyance.

16. I WAS present at a meeting of the said Council held on the — day of —, 19—, when it was resolved that the common seal of the said Council be affixed to the deed of conveyance to the said C. D., then produced, and the common seal was accordingly affixed thereto at the said meeting in my presence.

AND I make, &c.

## NO. VIII.

### CONVEYANCE *on SALE to the GUARDIANS of the POOR for* POOR LAW PURPOSES (a).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and the

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(a) See the Union and Parish Property Act, 1835 (5 & 6 Will. 4, c. 69). So much of s. 6 of that Act as relates to the transmission to the Poor Law Commissioners, and the approval, sealing, and registration by them of deeds, is repealed by the Divided Parishes and Poor Law Amendment Act, 1882 (45 & 46 Vict. c. 58), hence the form in the Schedule to the first-mentioned Act

Guardians of the Poor of the ——— Union, in the County of ——— (hereinafter called the Guardians) (*purchasers*), of the other part :

WHEREAS the Vendor is now seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described :

Recital of Vendor's seisin.

AND WHEREAS, under the power for that purpose contained in the Union and Parish Property Act, 1835, the Guardians lately agreed with the Vendor to purchase the said hereditaments as a site for (*state purpose*) at the price of £——, subject to the approval of the Local Government Board :

Agreement for purchase by Guardians.

AND WHEREAS the said purchase has been approved by an Order of the Local Government Board dated the ——— day of ———, 19—— :

Approval of Local Government Board.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Guardians to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Guardians

Conveyance.

ALL THAT, &c. (*see Forms in Sect. II., sup.*),

Parcels.

To HOLD unto and To THE USE of the Guardians in fee simple.

Habendum.

(*Add acknowledgment and undertaking as to documents. Form No. 6, Sect. III., also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

is no longer in force. In rural parishes the powers of sale are now vested in the parish council: Local Government Act, 1894, s. 6. Where a board of guardians has been dissolved (*see Local Gov. B. v. S. Stouham Union*, 1909, A. C. 57; 78 L. J. K. B. 124) or amalgamated its property and liabilities are vested automatically in its successors: Poor Law Authorities (Transfer of Property) Act, 1904. This deed does not require enrolment, *see Mortmain, &c. Act, 1892.*

By s. 49 of the Poor Law Amendment Act, 1834, any contract entered into by or on behalf of any parish or union relating to the maintenance, &c., of the poor, or for any other purpose relating thereto, which is not in conformity with the rules, &c., of the Poor Law Commissioners or otherwise sanctioned by them is void. The Local Government Board have superseded the Poor Law Commissioners by virtue of the Poor Law Board Act, 1847, and the Local Government Board Act, 1871.

S. 7 of the Union and Parish Property Act, 1835, makes the guardians of the poor a corporation aggregate.

Corporation.

S. 2 of the Poor Law Act, 1889, provides for the borrowing of money for permanent works or objects, and s. 1 of the Poor Law Act, 1897, provides for the repayment of the money by instalments or a sinking fund, but *see West Derby Union v. Metropolitan, &c. Society*, 1897, A. C. 647; 66 L. J. Ch. 726, where repayment is otherwise provided for by contract.

## No. IX.

CONVEYANCE *of* LAND *to a* BURIAL BOARD *for a*  
CEMETERY (*p*).

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and the Burial Board for the Parish of —, in the County of — (hereinafter called the Burial Board), of the other part:

Recital of Vendor's seisin. WHEREAS the Vendor is now seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described:

Agreement for sale. AND WHEREAS the Vendor has agreed to sell to the Burial Board and the Burial Board, under the powers of the Burial Acts, 1852 to 1906, and with the approval of the vestry of the said parish, have agreed to purchase the hereditaments hereinafter described at the price of £—:

Conveyance. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £— now paid by the Burial Board to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Burial Board

Parcels. ALL, &c. (*see Forms in Sect. II., sup.*),  
To hold unto and To the use of the Burial Board in fee simple.  
(*Add any special provisions as to fences or other matters which may have been agreed on (q).*)

(*Also add, if required, acknowledgment for production of documents, Form No. 6, Sect. III., sup., also Form No. 11, Sect. III.*)

IN WITNESS, &c.

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(*p*) See notes to Prec. XX., of Agreements for Sale, p. 276, *sup.*

(*q*) See the Disused Burial Grounds Act, 1884, and *Paddington Borough Council v. A.-G.*, 1906, A. C. 1; 75 L. J. Ch. 4; *St. George, Hanover Square v. Westminster Corp.*, 1910, A. C. 225; 79 L. J. Ch. 310; *Re Bosworth and Graysend Corp.*, 1905, 1 K. B. 426; 74 L. J. K. B. 810; Open Spaces Act, 1906, s. 6, as to burial grounds which have ceased to be used as such.

GROUP C.—CONVEYANCES BY CHARITIES AND TO AND BY CLUBS  
AND FRIENDLY SOCIETIES (*r*).

NO. I.

CONVEYANCE *upon a SALE of* CHARITY LAND *with* CONSENT  
*of* CHARITY COMMISSIONERS (*s*).

THIS INDENTURE, made the — day of —, 19—, BETWEEN Parties.  
The Official Trustee of Charity Lands (*ss*) (hereinafter called

(*r*) Under s. 37 of the Fin. (1909-10) Act, 1910, charitable institutions (including companies "not for profit" and Friendly Societies registered under the Friendly Societies Act, 1896) are allowed the following exemptions from the duties on land values:—

Duties on land values in case of charities.

(i.) Land occupied for the purposes of the charity is exempt from reversion duty and undeveloped land duty.

(ii.) Land, whether so occupied or not, is exempt from periodical increment value duty.

There is no exemption in respect of mineral rights duty, and the exempted increment value duty is not "deemed paid."

(*s*) The trustees of an "endowed" charity cannot sell otherwise than with the express authority of Parliament, or of a Court or Judge of competent jurisdiction, or according to "a scheme legally established," or with the approval of the Board of Charity Commissioners: Charitable Trusts Act, 1855, s. 29; Charitable Trusts Act, 1862, s. 1, see, also Dissertation in Vol. II. on Charities as to when a charity is considered "endowed." A deed founding a charity and enrolled under 9 Geo. 2, c. 36, is not a "scheme legally established": *Re Mason's Orphanage*, 1896, 1 Ch. 596; 65 L. J. Ch. 439; nor is a charity incorporated by Royal charter: *A.-G. v. Nat., &c. Epileptic Hospital*, 1904, 2 Ch. 252; 73 L. J. Ch. 677.

Sale of charity land.

In the above Precedent it is assumed that the consent of the Board is necessary, and that the legal estate is vested in the official trustee.

Where the trustees have power to determine on any sale, &c., of the charity property, a majority of them present at a meeting of their body duly constituted and voting on the question may execute all assurances, &c., for carrying the sale into effect, and such assurances, &c., have the same effect as if executed by all the trustees and by the official trustee: Charitable Trusts Act, 1869, s. 12.

In the case of land held for public educational purposes the Board of Education for most purposes act in the place of the Charity Commissioners: Board of Education (Powers) Orders in Council, 1900, 1901, 1902; Tudor, 4th ed., 760 *et seq.*; *Re Betton*, 1908, 1 Ch. 205; 77 L. J. Ch. 193; *Re Berkhamsted School*, 1908, 2 Ch. 25; 77 L. J. Ch. 571.

Educational purposes.

(*ss*) The Secretary of the Board of Charity Commissioners is by s. 15 of the Charitable Trusts Act, 1855, constituted a corporation sole by the name of "The Official Trustee of Charity Lands."

the Official Trustee), of the 1st part, A. B., of, &c., C. D., of, &c., and E. F., of, &c., being the trustees of certain charities in the Parish of —, in the County of —, known as the — Parochial Charities (hereinafter called the Trustees), of the 2nd part, and G. H., of, &c. (hereinafter called the Purchaser), of the 3rd part:

Recitals that land is part of charity property, and is vested in Official Trustee.

WHEREAS the hereditaments hereinafter described are part of the property of the said charities:

AND WHEREAS under a scheme established by an Order of the Board of Charity Commissioners for England and Wales (hereinafter called the Board) dated the — day of —, 18—, the legal estate in the said hereditaments is now vested in the Official Trustee in trust for the charities:

Agreement by Trustees to sell.

AND WHEREAS the Trustees have, subject to the consent of the Board, agreed to sell to the Purchaser the said hereditaments and the fee simple thereof in possession free from incumbrances at the price of £—:

Order of Board authorising sale.

AND WHEREAS by an Order of the Board dated, &c., the Board upon the application of the Trustees authorised them, within six calendar months from the date of the said Order, to sell the said hereditaments for not less than £—, and to execute all proper acts and assurances for carrying the said sale into effect, And the Official Trustee was ordered to concur in the conveyance thereof if such concurrence should be required:

Conveyance.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Trustees (the receipt of which sum the Trustees hereby acknowledge), the Official Trustee, pursuant to the said Order and at the request of the Trustees (testified by their execution hereof), hereby conveys (t), and the Trustees, As Trustees, hereby convey and confirm unto the Purchaser

Parcels.

ALL, &c. (*see Forms in Sect. II., sup.*),

To HOLD unto and To THE USE of the Purchaser in fee simple.

(*Add acknowledgment as to documents, if required, Form No. 6, Sect. III., also Form No. 11, Sect. III.*)

IN WITNESS, &c.

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(t) The official trustee gives no covenants for title.

## No. II.

CONVEYANCE upon a SALE by TRUSTEES of a CHARITY  
supported by VOLUNTARY CONTRIBUTIONS (u).

THIS INDENTURE, made the —— day of ——, 19——, BETWEEN Parties.  
A. B., of, &c., C. D., of, &c., and E. F., of, &c. (hereinafter called  
the Vendors), the Trustees of a charitable Institution established  
at ——, called ——, of the one part, and G. H., of, &c. (herein-  
after called the Purchaser), of the other part :

(Recite conveyance to the Vendors of property of which the land Recite con-  
sold is part): Trustees.

AND WHEREAS the said sum of £—— paid as purchase-money That pur-  
for the hereditaments comprised in the recited conveyance arose chase-money  
entirely from voluntary contributions, or from bequests or arose from  
donations applicable consistently with the terms of the gift as voluntary  
income for the general purposes of the Institution at the contributions.  
discretion of the committee of management for the time being :

AND WHEREAS at a general meeting of the governors of the Meeting of  
said Institution held at —— on the —— day of —— last it governors at  
was resolved that the hereditaments hereinafter described, being which com-  
no longer required for the purposes of the Institution, should be mittee was  
sold by the committee of management at such price as the empowered to  
committee should think fit : sell.

AND WHEREAS the committee of management entered into Offer by  
negotiations with the Purchaser for the sale of the said heredita- Purchaser.  
ments and the Purchaser made an offer of £—— for the same :

AND WHEREAS at a meeting of the committee of management Resolution of  
held at —— on the —— day of —— last it was resolved that committee  
the offer of the Purchaser to purchase the said hereditaments accepting  
for £—— be accepted, and that the Vendors, as the Trustees of offer.  
the said Institution, be directed to convey the said hereditaments  
to the Purchaser and to receive the purchase-money :

NOW THIS INDENTURE WITNESSETH that in pursuance Conveyance.  
of the said agreement and in consideration of the sum of £——  
now paid by the Purchaser to the Vendors, as the Trustees of

(u) As the charity is maintained entirely by voluntary contributions and Consent of  
has no endowment, the consent of the Charity Commissioners is not Charity Com-  
necessary, see Dissertation on Charities in Vol. II. missioners.

the said Institution (*the receipt, &c.*), the Vendors, As Trustees, hereby convey unto the Purchaser

Parcels.

ALL, &c. (*see Forms, Sect. II., sup.*).

To HOLD unto and To THE USE of the Purchaser in fee simple.

(*Add acknowledgment by Trustees as to recited Conveyance and Minute Book, Form No. 6, Sect. III., also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

### No. III.

#### DECLARATION OF TRUST *of PREMISES purchased for the purposes of a SOCIAL CLUB (r).*

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., C. D., of, &c., E. F., of, &c., and G. H., of, &c. (*trustees of Club*) (hereinafter called the Trustees), SEND GREETING this — day of —:

Recital of purchase by committee of Club.

WHEREAS the Trustees are the Trustees of a Club established at, &c., known as the X. Club:

AND WHEREAS the hereditaments described in the Schedule hereto have been lately purchased by the committee of the said Club out of its funds, pursuant to a resolution passed at a meeting of the members of the said Club duly convened and held at — on the — day of — last:

Rule enabling committee to vest property in Trustees and declare trusts thereof.

AND WHEREAS by one of the rules of the said Club it is provided that the committee shall have power, at its sole discretion, to vest the whole or any part of the property of the Club in trustees upon such trusts and subject to such conditions as to management or otherwise, and with such powers of disposition for the

Club property.

(*r*) A club formed for social purposes, not being an incorporated body or a registered society, has no legal status. The members of such a club are, however, bound among themselves by the rules to which they have agreed. Every member has an interest in the property of the club so long only as he remains a member, and if the club is broken up while he is a member he is entitled to share in the distribution of its assets: *Re St. James's Club* (1852), 2 D. M. & G. 383.

In many cases, *e.g.*, where the property may not be permanently required, it is desirable to vest it in trustees on trust for sale with power to postpone, and by the deed of even date to declare trusts of the proceeds of sale and of the land until sale.

purposes of sales, exchanges, mortgages, leases or otherwise as the committee may think fit, and may direct the acquisition or disposal of any property required or not required for the purposes of the Club, and that in every case where at the foot of any deed or other document it is certified by three persons appearing to be the secretary and two of the members for the time being of the committee of the Club that the document has been executed in accordance with the directions of the committee or a resolution of the Club, such certificate shall, in favour of any person acquiring any interest in property for valuable consideration in money or money's worth, and subject only to express notice to the contrary, be conclusive evidence that the document is binding on the Club and every member thereof:

AND WHEREAS the committee have directed that the hereditaments purchased as aforesaid shall be conveyed so as to vest in the Trustees on trust for sale, with power to postpone the sale and with full powers of management by reference to the Settled Land Acts, 1882 to 1890, or otherwise, and accordingly, by an Indenture of Conveyance bearing even date with but executed before these presents, and made between X. Y. of the one part and the Trustees of the other part, the said hereditaments have been conveyed unto and to the use of the Trustees in fee simple, Upon trust to sell the same and stand possessed of the net proceeds of sale and of the said hereditaments until sale upon the trusts declared by a deed poll of even date therewith (meaning these presents), And the said Conveyance authorised the Trustees thereof for the time being to exercise all the powers which are by the Settled Land Acts, 1882 to 1890, conferred on a tenant for life in possession of land:

Conveyance of premises to Trustees.

AND WHEREAS the committee have directed that the said proceeds of sale and the said hereditaments until sale shall be held upon the trusts hereinafter contained:

Direction by committee as to trusts.

NOW THESE PRESENTS WITNESS and it is HEREBY DECLARED as follows:—

1. THE Trustees (which expression, where the context so admits, includes the survivors and survivor of them and the executors or administrators of such survivor or other the trustees or trustee for the time being hereof) shall stand possessed of the hereditaments described in the Schedule hereto

Declaration that Trustees shall hold premises until sale in trust for members of Club.

until sale or other disposition, Upon trust to permit the same to be used, occupied, and enjoyed by the Club and the members thereof from time to time in accordance with the rules and regulations for the time being of the Club, and subject to the directions of the committee.

Management. 2. THE Trustees shall, until sale or other disposition as aforesaid, out of the funds of the Club keep the said hereditaments in proper repair and insured against loss or damage by fire, and generally manage the same under the direction of the committee.

Property to be disposed of as directed by resolution of members. 3. IF and whenever a resolution shall be passed by a majority of not less than two-thirds of the members present at a duly convened meeting of the Club, or voting by proxy thereat, directing that the said hereditaments or any part thereof shall be sold, exchanged, mortgaged, leased, or otherwise disposed of or dealt with, the Trustees shall, in exercise of the trusts or powers contained in the said Conveyance of even date herewith, comply with such resolution, and execute and do all deeds, acts and things necessary or proper for carrying the same into effect, and no purchaser, lessee, mortgagee, or other person acquiring any interest in the said hereditaments for money or money's worth on the faith of any trust or power contained in the said Conveyance of even date shall be concerned to see or inquire whether any such resolution has been passed, or as to the application of the consideration money.

Proceeds of sale, &c., to be assets of Club. 4. ALL money arising from any sale, mortgage, or other disposition of the said hereditaments, and all rents and profits of and received from or in respect of the said hereditaments, shall be assets of the Club in like manner as if the same had arisen from the subscriptions of members.

Resignation or removal of Trustee. 5. ANY present or future Trustee of these presents may resign the trusteeship at any time by a note in writing addressed to the secretary or to the committee expressing his wish to resign, and the committee may by writing signed by the secretary at any time remove any Trustee from the trusteeship of these presents.

Power to appoint new Trustees. 6. WHENEVER there shall be a vacancy in the trusteeship by death, resignation, removal, or any other cause, the committee may by resolution appoint one or more Trustee or Trustees to supply the vacancy, and upon any such appointment the number

of trustees may be increased or reduced, provided that the number be never less than three: Upon every such appointment the statutory power to appoint new Trustees of the said Conveyance of even date shall become and be exercisable, so that the same persons who are for the time being Trustees hereof shall be or be appointed to act as the Trustees of that Conveyance, and the said hereditaments shall be vested in them accordingly (*y*).

7. WHENEVER by these presents, or by the rules of the Club, a resolution of the committee or of a meeting of the members of the Club is required, a copy of such resolution, purporting to be signed by the secretary of the Club and by two members of the committee, shall be sufficient evidence thereof, and that the same was duly passed.

Resolution of committee or of members of Club, how to be evidenced.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*To contain the parcels.*)

MEMORANDUM (*at foot of the above deed*).

WE, the undersigned persons, certify that the above-written deed has been executed in accordance with the directions of the committee of the Club.

L. M., Secretary of the Club.

P. Q., } Members of the  
R. S., } Committee.

No. IV.

CONVEYANCE *to the TRUSTEES of a FRIENDLY SOCIETY or WORKING MEN'S CLUB established under the FRIENDLY SOCIETIES ACTS* (z).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c., E. F.,

Parties.

(*y*) The statutory power to appoint new trustees of the conveyance on trust for sale is in many cases given to the secretary for the time being of the club.

(z) A working men's club is one of the societies authorised to be registered by the Friendly Societies Act, 1896, s. 8 (2), and is therein defined as a

Provisions of Friendly Societies Act, 1896.

of, &c., and G. H., of, &c., the Trustees of the —— Society [or the —— Working Men's Club] established at ——, in the County of ——, and registered under the provisions of the Friendly Societies Act in force at the time of such registration (hereinafter called the Trustees), of the other part :

Seisin and  
agreement  
for sale.

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, and has agreed to sell the same for a like estate in possession free from incumbrances to the Trustees at the price of £—— :

Conveyance.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Trustees out of the funds of the Society [or Club] to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Trustees

Parcels.

ALL, &c. (*see Forms in Sect. II., sup.*),

Habendum.

To hold unto and To the use of the Trustees in fee simple for

society for purposes of social intercourse, mutual helpfulness, mental and moral improvement, and rational recreation. The Act provides that every society registered thereunder shall have a registered office (s. 24), and one or more trustees to be appointed at a meeting (s. 25); and a copy of every resolution appointing a trustee, signed by the trustee so appointed and by the secretary, must be sent to the registrar; and that the same person must not be secretary or treasurer and a trustee (s. 25). The Act also provides that a registered society may (if the rules so provide) hold, purchase, or take on lease in the names of the trustees any land; and may sell, exchange, mortgage, lease, or build upon the same; and no purchaser, assignee, mortgagee, or tenant is bound to inquire as to the authority for any sale, exchange, mortgage, or lease by the trustees; and the receipt of the trustees is a discharge for all money arising from or in connexion with such sale, exchange, mortgage, or lease (s. 47). The Act also provides that all property belonging to a society shall vest in the trustees for the time being of the society for the use and benefit of the society and the members thereof, and of all persons claiming through the members, according to the rules of the society (s. 49); and that upon the death, resignation, or removal of a trustee the property vested in that trustee shall vest in the succeeding trustees, either solely or together with any surviving or continuing trustees, and until the appointment of succeeding trustees, in the surviving or continuing trustees only, or in the executors or administrators of the last surviving or continuing trustee, as personal estate, subject to the same trusts without any conveyance (s. 50). As to copyholds, see s. 48.

As to the matters to be provided for in the rules of the society, see the First Schedule to the Act; also Friendly Societies Act, 1908.

the use and benefit of the said Society [*or Club*] and the members for the time being thereof, and of all persons claiming through the members according to the rules of the said Society [*or Club*].

(*Acknowledgment, &c., as to documents, Form No. 6, Sect. III., also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

### No. V.

#### CONVEYANCE *by the TRUSTEES of a FRIENDLY SOCIETY or WORKING MEN'S CLUB to a PURCHASER of PROPERTY acquired under the last PRECEDENT (a).*

THIS INDENTURE, made, &c., BETWEEN C. D., of, &c., E. F., of, &c. (*the continuing Trustees*), and X. Y., of, &c. (*a new Trustee*), the Trustees, &c. (*as in the last Precedent, and defining them as the Trustees*), of the one part, and J. K., of, &c. (*hereinafter called the Purchaser*), of the other part (*Recite last Precedent, referring to the parcels as "the hereditaments hereinafter described"*):

AND WHEREAS at a meeting of the members of the said Society [*Club*] held at —, being their registered office, on the — day of —, 19—, it having been reported that G. H. was desirous of resigning his trusteeship, it was resolved by a majority of the members present and entitled to vote thereat that the resignation of the said G. H. be accepted and that the said X. Y. be appointed a Trustee of the said Society [*Club*] in his place jointly with the said C. D. and E. F., and a copy of the said resolution, signed by the said X. Y. and by the secretary of the Society [*Club*] was sent to the Registrar of Friendly Societies (*b*):

AND WHEREAS in pursuance of a resolution passed at a meeting of the members of the said Society [*Club*] held at — on the — day of — last, the Trustees, as the trustees of the said

Recital of appointment of new Trustee at a meeting of members.

Agreement by Trustees to sell.

(a) See note to last Precedent.

(b) F. S. Act, 1896, s. 25. A purchaser from a registered society should require the production of a copy of the rules with the acknowledgment of the registry (see forms in Second Schedule to the Act of 1896 and also to the Act of 1908), bearing the seal or stamp of the Central Registry Office (ss. 11, 98), and also a copy of the resolution appointing the trustees by whom the sale is made.

The property vested in all three trustees on the appointment of X. Y., see s. 50.

Society [Club] have agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £—— (c):

Conveyance.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Trustees (the receipt of which sum the Trustees hereby acknowledge), the Trustees, As Trustees, hereby convey unto the Purchaser

Parcels.

ALL, &c. (*see Forms, Sect. II., sup.*),

To HOLD unto and To THE USE of the Purchaser in fee simple.

(*Add acknowledgment by the Trustees of the right of the Purchaser to production of the rules and any other documents retained, Form No. 6, Sect. III., also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

#### SECTION IV.

### CONVEYANCES ARRANGED ACCORDING TO THE SUBJECT-MATTER OF THE PROPERTY CONVEYED.

#### GROUP A.—CONVEYANCES ON SALES SUBJECT TO MORTGAGE DEBTS AND FAMILY CHARGES, AND DEEDS OF INDEMNITY AGAINST INCUMBRANCES.

##### No. I.

#### CONVEYANCE of an EQUITY of REDEMPTION in FREEHOLDS (d).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part:

As to liability of vendor after sale of equity of redemption.

(c) The purchaser is not concerned to inquire as to the validity of the sale, and the receipt of the trustees is a good discharge: Act of 1896, s. 47 (1).

(d) On a sale of an equity of redemption the vendor remains liable under his personal covenant, if he has entered into one, for the payment of the mortgage debt, and is entitled to have a covenant from the purchaser to indemnify him against it.

If it is wished to discharge the vendor from all future liability, one of the two following courses should be adopted, viz.: (1) The mortgagee should

WHEREAS by an Indenture of Mortgage dated the — day of —, and made between the Vendor of the one part, and E. F. and G. H. (hereinafter called the Mortgagees) of the other part (*Recite Mortgage as in Form No. 2, Sect. I., sup.*):

Recital of Mortgage.

AND WHEREAS the said principal sum of £—— is still owing to the Mortgagees upon the security of the recited Mortgage, but all interest thereon has been paid up to the date hereof (*c*):

That mortgage debt still owing.

AND WHEREAS the Vendor has agreed to sell to the Purchaser the hereditaments hereinafter described, subject to the recited Mortgage and the principal money and interest thereby secured, but otherwise free from incumbrances, at the price of £——:

Agreement for sale.

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

Conveyance.

ALL, &c. (*Forms in Sect. II., sup.*),

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple subject to the recited Mortgage and the principal sum of £—— thereby secured, and all interest henceforth to become due thereon.

Habendum.

2. THE Purchaser hereby covenants with the Vendor that the Purchaser or the persons deriving title under him will pay the said principal sum of £—— and all interest henceforth to become due under the recited Mortgage and observe and perform all the covenants and conditions therein contained, And also will at all times hereafter save harmless and keep indemnified the Vendor and his estate and effects from and against all proceedings, costs,

Covenant by Purchaser to indemnify the Vendor from mortgage debt.

concur in the conveyance and release the debt, and a new mortgage be made to him by the purchaser by a deed executed immediately after the conveyance; or (2) there should be a contemporaneous deed (which might be indorsed on or be made supplemental to the mortgage deed) whereby the purchaser enters into a new covenant with the mortgagee, which the latter accepts in substitution for the vendor's covenant. See next Precedent.

The *ad valorem* stamp on this deed will be on the purchase-money, *plus* the sum due to the mortgagee: Stamp Act, 1891, s. 57.

If the mortgagee joins, the conveyance is not chargeable with further duty on account of a covenant by the purchaser with him to pay the mortgage debt and interest: Alpe, 11th ed., 115; Highmore, 2nd ed., 136; Revenue Act, 1903, s. 7.

(*c*) It should be seen that this is done.

claims, and expenses on account of any omission to pay the said principal sum or interest or any breach of any of the said covenants and conditions (*f*).

IN WITNESS, &c.

## No. II.

DEED *accompanying a* CONVEYANCE *of an* EQUITY OF  
REDEMPTION *of* FREEHOLDS *or* LEASEHOLDS, *whereby a*  
COVENANT *from the* PURCHASER *to pay the* MORTGAGE  
DEBT *is accepted by the* Mortgagee *in* SUBSTITUTION *for*  
*the* VENDOR'S COVENANT(*g*).

Parties.

THIS INDENTURE, made, &c., BETWEEN C. D., of, &c. (hereinafter called the Purchaser), of the 1st part, E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees), of the 2nd part, and A. B., of, &c. (hereinafter called the Vendor), of the 3rd part:

Recital that deed is supplemental to mortgage deed.

WHEREAS these presents are supplemental to an Indenture (hereinafter called the Principal Indenture) dated the — day of —, and made between the Vendor of the one part, and the Mortgagees of the other part, being a mortgage [by sub-demise] by the Vendor to the Mortgagees of certain hereditaments situated, &c., for securing payment to them of the principal sum of £ — and interest thereon at the rate of £ — per cent. per annum:

Covenant for indemnity on sale of equity redemption.

(*f*) This covenant will be omitted if the purchaser enters into a new covenant with the mortgagee.

The conveyance of the equity of redemption does not create a personal liability on the part of the purchaser, as there is no privity of contract between him and the mortgagee: *Re Errington*, 1891, 1 Q. B. 11.

Increment value duty.

In assessing the consideration for the purposes of increment value duty this covenant is to be taken into account: *Fin.* (1909-10) Act, 1910, s. 32 (2).

Documents.

The deeds will probably be in the possession of the mortgagees. If any documents are retained by the vendor he should give the usual acknowledgment and undertaking.

Stamp.

(*g*) The stamp on the deed will be 6*d.* for every £100 secured: *Alpe*, 11th ed., 172, but not exceeding 10*s.*: *Revenue Act*, 1903, s. 7. This deed should be executed in duplicate, one part to be retained by the mortgagees and the other by the vendor.

AND WHEREAS the said principal sum of £—— remains owing, but all interest thereon has been paid up to the date of these presents :

That principal sum remains owing.

AND WHEREAS the equity of redemption of the hereditaments comprised in the Principal Indenture has been lately sold by the Vendor to the Purchaser and has been conveyed to the Purchaser in fee simple [or has been assigned to the Purchaser for the residue of the term expectant on the derivative term created by the recited Mortgage] by an Indenture bearing even date with but executed before these presents, and made between the Vendor of the one part and the Purchaser of the other part :

Sale of equity of redemption.

AND WHEREAS it has been agreed that the Purchaser shall enter into the covenant hereinafter contained and that the same shall be accepted by the Mortgagees in substitution for the covenant by the Vendor for payment of the said principal money and interest contained in the Principal Indenture :

Agreement for substitution of covenant.

NOW THIS INDENTURE WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the premises the Purchaser hereby covenants with the Mortgagees [and with each of them] to pay to them on the —— day of —— next the principal sum of £——, secured by the Principal Indenture, with interest thereon (*h*) at the rate of £— per cent. per annum from the date of these presents, And also, so long after that day as any principal money remains due under the Principal Indenture, to pay to them interest thereon at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year (*the same half-yearly days as those fixed by the Mortgage deed*).

Covenant by Purchaser with Mortgagee to pay principal and interest.

2. In consideration of the foregoing covenant the Mortgagees hereby release the Vendor from his covenant contained in the Principal Indenture for payment of the principal money and interest thereby secured.

Release by Mortgagee of Vendor's covenant.

IN WITNESS, &c.

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(*h*) This will be the next half-yearly day fixed by the mortgage for payment of interest.

## No. III.

DEED *whereby the PURCHASER of an EQUITY OF REDEMPTION COVENANTS with the MORTGAGEES to pay the MORTGAGE DEBT WITHOUT any RELEASE of the MORTGAGOR'S COVENANT (i).*

Parties. THIS INDENTURE, made, &c., BETWEEN C. D., of, &c. (hereinafter called the Purchaser), of the one part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees), of the other part :

Recital that Deed is supplemental to Mortgage. WHEREAS these presents are supplemental to an Indenture (hereinafter called the Principal Indenture) dated the — day of —, and made between A. B. (hereinafter called the Vendor) of the one part, and the Mortgagees of the other part, being a mortgage of certain hereditaments, situated at —, by the Vendor to the Mortgagees for securing payment to them of the principal sum of £— and interest thereon at the rate of £— per cent. per annum :

Conveyance of equity of redemption. AND WHEREAS the equity of redemption in the hereditaments comprised in the Principal Indenture was lately sold by the Vendor to the Purchaser and was conveyed to the Purchaser in fee simple by an Indenture dated, &c. :

Agreement for new covenant. AND WHEREAS the Purchaser has, at the request of the Mortgagees, agreed to enter into the covenant hereinafter contained :

NOW THIS INDENTURE WITNESSETH as follows:—

- Covenant by Purchaser, and proviso saving Mortgagee's right to sue on original covenant.
1. (*Covenant by Purchaser with Mortgagees as in last Precedent.*)
  2. PROVIDED ALWAYS, that these presents shall not operate to release the Vendor or his estate and effects from his covenants for payment of the said principal money and interest contained in the Principal Indenture.

IN WITNESS, &c.

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(i) It is assumed in this Precedent that the mortgagee calls on the purchaser of the equity of redemption to enter into the covenant, and there is no arrangement with the original mortgagor for his discharge. The stamp will be 6*d.* for every £100 secured: Alpe, 11th ed., 172; but not exceeding 10*s.*: Revenue Act, 1903, s. 7.

## No. IV.

RELEASE of an EQUITY of REDEMPTION in FREEHOLDS on  
a PURCHASE by the MORTGAGEES.

THIS INDENTURE (*k*), made, &c., BETWEEN A. B., of, &c. Parties,  
(hereinafter called the Vendor), of the one part, and C. D., of,  
&c., and E. F., of, &c. (hereinafter called the Mortgagees), of the  
other part :

WHEREAS by an Indenture of Mortgage (*Recite Mortgage to* Recital of  
*secure £500 and interest as in Form No. 2, Sect. I., referring to* Mortgage.  
*the property as certain hereditaments at —*) :

AND WHEREAS the principal sum of £500 is still owing to the Agreement  
Mortgagees on the security of the recited Mortgage, but all interest for sale.  
thereon has been paid up to the date hereof, and the Vendor  
has agreed to release to them free from incumbrances his equity  
of redemption in the hereditaments comprised in the recited  
Mortgage at the price of £500 :

NOW THIS INDENTURE WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration Release to  
of the sum of £500 now paid by the Mortgagees to the Vendor Mortgagees.  
(the receipt of which sum the Vendor hereby acknowledges), the  
Vendor, As Beneficial Owner, hereby conveys and releases unto  
the Mortgagees

ALL the hereditaments comprised in or conveyed by the recited Parcels.  
Mortgage,

To HOLD unto and To THE USE of the Mortgagees in fee simple. Habendum.  
discharged from all right of redemption under the recited  
Mortgage (*l*).

2. THE Mortgagees hereby release the Vendor from his covenant Release of  
covenant.

---

(*k*) On a conveyance to a person in consideration wholly or partly of Stamp.  
a debt due to him the debt is deemed to be the whole or part, as the case  
may be, of the consideration in respect whereof the conveyance is chargeable  
with *ad valorem* duty: Stamp Act, 1891, s. 57; Highmore, 2nd ed., 134.  
Hence, the conveyance in the text should be stamped *ad valorem* on £500  
(debt) and £500 (purchase-money) = £1,000.

(*l*) If the mortgage debt is kept on foot as a protection against mesne  
incumbrancers, it must still be taken into account and the stamp duty will  
be the same: Alpe, 11th ed., 115.

contained in the recited Mortgage for payment of the principal money and interest thereby secured and from all other liability thereunder.

IN WITNESS, &c.

### No. V.

DEED of COVENANT to SURRENDER an EQUITY of REDEMPTION in COPYHOLDS, where there has been NO CONDITIONAL SURRENDER. VARIATIONS where there has been a CONDITIONAL SURRENDER.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part:

Recital of Mortgage.

WHEREAS by an Indenture of Mortgage dated the — day of —, and made between the Vendor of the one part and E. F. and G. H. (hereinafter called the Mortgagees) of the other part, the Vendor (*continue as in Form No. 21, Sect. I., sup.*):

[Additions where there has been a Conditional Surrender.]

[AND WHEREAS on the — day of — the Vendor out of court surrendered the said hereditaments into the hands of the lord of the said Manor by the hands and acceptance of his steward according to the custom of the said Manor To the Use of the Mortgagees and their heirs at the will of the lord according to the said custom and by and under the rents, fines, suits, and services therefor due and of right accustomed, but subject to a condition for making void such Surrender if the Vendor should on the day therein mentioned pay to the Mortgagees the said sum of £—, with interest thereon as therein mentioned.]

[That Mortgagees not admitted.]

[AND WHEREAS the Mortgagees have never been admitted to the said hereditaments pursuant to the recited Surrender (*m*).]

State of mortgage debt.

AND WHEREAS the said sum of £— is still owing to the Mortgagees, but all interest thereon has been paid up to the date hereof:

Variation if mortgagees admitted.

(*m*) If the mortgagees have been admitted the fact must be recited and the operative part will be as follows:—

“In pursuance, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser ALL AND SINGULAR the hereditaments comprised in the recited Mortgage and Surrender,

To HOLD unto the Purchaser, his heirs and assigns, To THE INTENT THAT on payment of the principal sum and interest thereby secured the said hereditaments shall be liable to be

AND WHEREAS the Vendor has agreed to sell to the Purchaser the hereditaments hereinafter described for an estate of inheritance according to the custom of the said Manor subject to the recited Mortgage [and Conditional Surrender] and the principal money and interest thereby secured, but otherwise free from incumbrances, at the price of £—— :

Agreement  
for sale.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby covenants with the Purchaser that the Vendor and all other necessary parties (if any) will forthwith at the cost of the Purchaser surrender into the hands of the lord of the said Manor according to the custom thereof, but subject to the recited Mortgage and the covenant to surrender therein contained [and to the recited Conditional Surrender (*n*)] and to the principal money and interest thereby secured,

Covenant to  
surrender.

ALL THOSE, &c., to which the Vendor was admitted on the —— day of ——,

Parcels.

To THE USE (subject as aforesaid) of the Purchaser and his heirs at the will of the lord according to the custom of the said Manor at and under the rents, fines, suits, and services therefor due and of right accustomed.

Habendum.

2. THE Purchaser hereby covenants with the Vendor (*continue as in paragraph 2 of Precedent I. of this Group, p. 543, sup.*).

Covenant by  
Purchaser to  
pay the debt  
and interest,  
and for  
indemnity.

(*Add certificate as to purchase-money if the amount paid plus the mortgage debt does not exceed £500, Form No. 11, Sect. III., sup.*)

IN WITNESS, &c. (*nn*).

forthwith surrendered To THE USE of the Purchaser, his heirs and assigns, at the will of the lord according to the custom of the said Manor and at and under the accustomed rents, fines, suits and services."

The land in this case should be shortly described in the recital of the mortgage. There is no objection to conveying an equitable interest in copyholds by an assurance applicable to freeholds; this, however, must not be done if the grantor is on the rolls.

(*n*) As it is assumed that the mortgagees have not been admitted, the steward will prepare a further surrender by the vendor, who is still tenant on the rolls.

(*nn*) The steward's copies and other documents will probably be in the custody of the mortgagees. The purchaser will have a right to production under Conv. Act, 1881, s. 16.

## No. VI.

ASSIGNMENT *of an EQUITY of REDEMPTION in LEASEHOLDS,*  
*where the MORTGAGE was by SUB-DEMISE (o). VARIATIONS*  
*where MORTGAGE was by ASSIGNMENT.*

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Recital of Lease. WHEREAS by an Indenture of Lease dated the — day of —, and made between K. L. of the one part and the Vendor of the other part (*Form No. 28, Sect. I., sup., defining the term as the Head Term*).

Recital of Mortgage. AND WHEREAS by an Indenture of Mortgage dated the — day of —, and made between the Vendor of the one part and E. F. and G. H. (hereinafter called the Mortgagees) of the other part, the premises comprised in the recited Lease were demised by the Vendor to the Mortgagees for the residue of the Head Term (except the last three days thereof) by way of mortgage for securing payment to the Mortgagees of the principal sum of £—, with interest thereon as therein mentioned, And the Vendor thereby covenanted with the Mortgagees that he and the persons deriving title under him would thenceforth stand possessed of the Head Term Upon trust (subject to the right of redemption thereunder) to dispose of the same as the Mortgagees should from time to time direct, And the said Indenture contained a power for the Mortgagees to remove the Vendor from being a trustee and to appoint a new trustee in his place :

State of mortgage debt. AND WHEREAS the said principal sum of £— is still owing to the Mortgagees upon the security of the recited Mortgage, but all interest thereon has been paid up to the date hereof :

Agreement for sale. AND WHEREAS the Vendor has agreed to sell to the Purchaser the premises comprised in the recited Lease for the residue of the Head Term, subject to the recited Mortgage and the derivative term thereby granted and the trusts and provisions relating to the Head Term thereby declared and to the principal money and interest thereby secured :

Variations where mortgage is by assignment.

(o) If the mortgage is by assignment, then the vendor cannot, of course, convey the legal head term, but only his equity therein. In this case the recital of the mortgage will show that the head term is vested in the mortgagees, and in the habendum the references to the derivative term and to the provisions for getting in the head term will be struck out.

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser

Assignment.

ALL the premises comprised in and demised by the recited Lease,

Parcels.

To HOLD unto the Purchaser for the residue of the Head Term at the rent and subject to the lessee's covenants and the conditions by and in the recited Lease reserved and contained and henceforth on the part of the lessee to be paid, observed, and performed, but subject to the recited Mortgage and the derivative term thereby granted and to the trusts and provisions affecting the Head Term therein contained and to the principal money and interest thereby secured.

Habendum.

2. THE Purchaser hereby covenants with the Vendor that the Purchaser or the persons deriving title under him will pay the said principal sum of £— and all interest henceforth to become due under the recited Mortgage, and also all rent becoming due under the recited Lease, and will observe and perform all the covenants and conditions therein contained and henceforth on the part of the lessee to be observed and performed, and also all the covenants and conditions contained in the recited Mortgage, And also will save harmless and keep indemnified the Vendor and his estate and effects from and against all proceedings, costs, claims and demands on account of any omission to pay the said principal sum or interest or the said rent or any breach of any of the covenants and conditions contained in the recited Mortgage or Lease or either of them.

Covenants to pay rent, mortgage debt and interest, and for indemnity.

IN WITNESS, &c.

## NO. VII.

CONVEYANCE of FREEHOLDS *subject to but indemnified against* FAMILY CHARGES (p).

THIS INDENTURE, made, &c., BETWEEN A. F., of, &c. (hereinafter called the Vendor), of the one part, and

Parties.

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(p) In this Precedent it is assumed that the persons entitled to the family

C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Recital of Settlement under which the Vendor became tenant in tail in possession subject to family charges.

WHEREAS by an Indenture of Settlement dated the — day of —, and made between E. F. (since deceased) of the 1st part, J. F., the wife of the said E. F. (then J. G., spinster), of the 2nd part, and M. and N. (hereinafter called the Trustees) of the 3rd part (being a Settlement made in consideration of the marriage solemnised on the — day of — between the said E. F. and J. F.), the hereditaments hereinafter described were (with other hereditaments) limited To THE USE of the said E. F. during his life, with remainder To THE USE that the said J. F. should receive thereout, in the event (which happened) of her surviving the said E. F., the yearly rent-charge of £800, and subject thereto, To THE USE of the Trustees for the term of 500 years from the death of the said E. F. without impeachment for waste upon usual trusts for raising, in the event (which happened) of there being three younger children of the said marriage, the sum of £10,000, with interest thereon at the rate of £— per cent. per annum from the death of the said E. F. as portions for such children, and subject to the said term and the trusts thereof, To THE USE of the first and other sons of the said marriage successively according to seniority in tail male, with remainders over :

Birth of issue.

AND WHEREAS there was issue of the said marriage, namely, an eldest son, the Vendor, who was born on the — day of —, and three younger children, all of whom attained full age :

Recital of Disentailing Assurance by Vendor subject to the family charges.

AND WHEREAS by an Indenture of Disentail (duly enrolled as a Disentailing Assurance) dated the — day of —, and made between the said E. F. of the 1st part, the Vendor of the 2nd part, and X. Y. (*grantee to uses*) of the 3rd part, the Vendor, with the consent of the said E. F., as protector of the Settlement, conveyed the hereditaments then subject to the limitations of the recited Settlement (including the hereditaments hereinafter described) to the said X. Y. in fee simple subject to the life estate therein of the said E. F. and to the said yearly rent-charge of £800 and to the said sum of £10,000 charged for portions as aforesaid, and to the term of 1,000 years for raising the said portions, but discharged from all estates in tail male or in tail of the Vendor and all estates rights, interests and powers

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charges will not concur and release them. For a further indemnity, see the next two Precedents.

to take effect after the determination, or in defeasance of such estates in tail male or in tail or any of them and so subject and so discharged, To THE USE of the Vendor in fee simple (g):

AND WHEREAS the said E. F. died on the — day of — :

Death of  
tenant for life.  
Agreement  
for sale.

AND WHEREAS the Vendor has agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession subject to but indemnified against the aforesaid family charges and term, but otherwise free from incumbrances, at the price of £— :

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

Conveyance  
subject to  
family charges.

ALL THOSE, &c. (*Forms in Sect. II., sup.*),

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple subject to the said yearly rent-charge of £800 limited in favour of the said J. F. during her life and to the said sum of £10,000 charged as portions for such younger children as aforesaid and the interest thereon, and to the term of 1,000 years limited by the recited Settlement for raising the said portions, but so that so far as possible the other hereditaments and property charged with the payment of the said jointure rent-charge, portions, and interest shall be primarily liable to answer the same in exoneration of the hereditaments hereby conveyed.

2. THE Vendor hereby covenants with the Purchaser that the Vendor or the persons deriving title under him to the other hereditaments aforesaid will at all times hereafter save harmless and keep indemnified the Purchaser and the persons deriving

Covenant for  
indemnity.

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(g) This limitation to the vendor in fee is inserted for the purposes of this Precedent. The vendor never became tenant in tail in possession, as he barred the entail during the subsistence of the prior life estate. Hence, he is not a person having the powers of a tenant for life within S. L. Act, 1882, s. 58 (1) (i.). The tenant for life would generally convey his life estate, and the proper limitations would have been to such uses as the vendor and his father should jointly appoint, and subject thereto to the uses of the settlement, so that the vendor, in default of any exercise of the joint power, would become tenant in tail in possession on his father's death and so able to sell under the settlement free from the charges, whether he subsequently barred or not.

title under him and the hereditaments hereby conveyed from all claims whatsoever (including any duty which may become payable on the cesser of the said jointure rent-charge) in respect of the said jointure rent-charge, portions, and interest or in respect of the trusts of the said term of 1,000 years, and that the Vendor or the persons deriving title under him will free of cost furnish to the Purchaser or the persons deriving title under him sufficient evidence of the cesser of the said jointure rent-charge (when the same occurs) and of the discharge of the said duty, portions, and interest as and when the same are discharged.

Acknowledg-  
ment and  
undertaking.

3. THE Vendor hereby acknowledges (*Form No. 6, Sect. III., sup. ; add Form No. 11, Sect. III., if required*).

IN WITNESS, &c.

### No. VIII.

#### DECLARATION of TRUSTS of INVESTMENTS by way of INDEMNITY against PORTIONS charged on LANDS which have been SOLD to several PURCHASERS (*v*).

Parties.

Recite Settlement, &c.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*Vendor of lands*), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Trustees), of the other part (*Recitals showing that under a Settlement and Disentailing Assurance in the events which happened A. B. became seised in fee simple of lands subject to a sum of £—— charged thereon for the portions of his younger brothers and sisters ; see last Precedent*) :

Sales of land comprised in Settlement.

AND WHEREAS the said A. B. has lately sold the hereditaments comprised in the said Settlement to several persons and the particulars of the said several sales and the names of the several purchasers are contained in the Schedule hereto :

Agreement for indemnity.

AND WHEREAS on the treaty for the said sales it was agreed that the sum of £—— should be invested by the said A. B. in the names of the Trustees to be held by them upon the trusts hereinafter declared concerning the same :

Purchase of Consolidated Stock in the names of Trustees.

AND WHEREAS in pursuance of the said agreement the said A. B. has invested the sum of £—— in the purchase, in the names of the Trustees, of the sum of £—— 2½ per Cent. Consolidated Stock :

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows :—

1. THE Trustees (which expression, where the context so admits, includes the survivor of them and the executors or administrators of such survivor or other the trustees or trustee for the time being hereof) shall stand possessed of the said sum of £— 2½ per Cent. Consolidated Stock, or the investments for the time being representing the same (hereinafter called the Trust Fund), and the income thereof, Upon the trusts and subject to the provisions hereinafter contained.

Declaration of trust of investments.

2. THE Trustees shall, when and so soon as the portions by the recited Settlement charged on the said hereditaments as aforesaid or any parts thereof shall become payable, raise such money as shall from time to time become payable and all interest (if any) which shall become due in respect thereof, by the sale of a sufficient part of the Trust Fund, and shall apply the money to be raised as aforesaid accordingly, To THE INTENT that the hereditaments settled by the recited Settlement and the several purchasers of the same respectively and all other persons for the time being interested in the same shall at all times hereafter be wholly exonerated from all proceedings, costs, claims and demands in respect of the said portions and the interest thereon and any other money raisable under the trusts of the said term out of the Trust Fund and the proceeds of the sale thereof or the income thereof.

Trust to apply same in payment of portions in exoneration of settled lands.

3. SUBJECT to the foregoing trusts, the Trustees shall stand possessed of the Trust Fund, and the income thereof, IN TRUST for the said A. B. absolutely, and so that until any money shall become raisable under the trusts of the said term the income of the Trust Fund, or of such part thereof as shall not for the time being have been sold under the trust aforesaid or be required to answer the purposes of the foregoing indemnity shall be paid to the said A. B. or the persons deriving title under him.

Ultimate trust.

IN WITNESS, &c. (s).

THE SCHEDULE ABOVE REFERRED TO.

| Particulars of Property sold. | Names of Purchasers. | Date of Conveyance. |
|-------------------------------|----------------------|---------------------|
|                               |                      |                     |

(s) If desired, the trustees can under a 6*d.* stamp give an acknowledgment

## No. IX.

*DEMISE of a PORTION of certain LANDS charged with a rent-charge and a principal sum to TRUSTEES for a TERM OF YEARS upon Trust by way of INDEMNITY of the REMAINDER of such lands from the payment thereof.*

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Trustees), of the other part :

Recital of seisin subject to family charges.

WHEREAS the said A. B. is seised in fee simple of the hereditaments described in the first and second Schedules hereto subject to the following incumbrances (namely), (1) a yearly rent-charge of £—— payable to —— during her life under an Indenture dated, &c., and made, &c. (*date and parties*), and (2) a sum of £—— raisable for the portions of the brothers and sisters of the said A. B. under the trusts of a term of —— years created by an Indenture dated and made, &c. (*date and parties*), with interest thereon or maintenance money as therein mentioned :

Desire to create charge by way of indemnity.

AND WHEREAS the said A. B. has agreed to sell some of the hereditaments comprised in the second Schedule hereto and intends shortly to sell the residue of the same hereditaments, and in order to facilitate such sales (*ss*) he is desirous of charging the said incumbrances exclusively on the hereditaments comprised in the first Schedule hereto (which are of ample value) in exoneration of the hereditaments comprised in the second Schedule aforesaid :

Demise of lands in first Schedule to Trustees for a term of years.

NOW THIS INDENTURE WITNESSETH as follows:—

1. THE said A. B., As Settlor, hereby demises unto the Trustees

ALL the hereditaments described in the first Schedule hereto,

To HOLD the same unto the Trustees for the term of 1,000 years, from the date hereof, without impeachment of waste, Upon the trusts and subject to the powers and provisions hereinafter contained.

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of the right of any purchaser to production of the trust deed. An alternative scheme would be to pay a sufficient part of the purchase-money into Court under Conv. Act, 1881, s. 5.

(*ss*) It is assumed that A. B. has no power under the S. L. Acts, whether by obtaining the appointment of trustees of a compound settlement or otherwise, to overreach the family charges: see notes to Prec. VII., p. 551, *sup*.

2. THE hereditaments hereby demised and the rents and profits thereof shall henceforth be an indemnity to the hereditaments comprised in the second Schedule hereto and every part thereof, and to the several purchasers and owners thereof and of every part thereof, from and against the said yearly rent-charge of £—— and all money raisable under the trusts of the said portions term as aforesaid and the interest thereon, and all claims and demands in respect thereof.

Upon trust to indemnify lands in second Schedule from family charges.

3. IF any claim or demand shall at any time be made on account of the said rent-charge and the money raisable under the trusts of the said portions term or either of them or any part thereof upon or against the hereditaments comprised in the second Schedule hereto or any part thereof, or the owners or occupiers of the same or any of them, then and in every such case the Trustees (which expression, where the context so admits, includes the survivor of them and the executors or administrators of such survivor or other the trustees or trustee for the time being hereof) shall out of the rents and profits of the hereditaments hereby demised or any part thereof, or by selling, mortgaging, or leasing the same, for all or any part of the said term, or by any other reasonable ways or means, raise such sum or sums as may from time to time be required for the purpose of discharging the said rent-charge, and any money raisable under the trusts of the said portions term, or such parts thereof as shall be claimed as aforesaid, and all costs, damages and expenses which may be sustained or incurred by reason of any such claim or demand as aforesaid, and all such other costs and expenses as may be incurred in the execution of the trusts and provisions of these presents, and shall apply the money to be so raised as aforesaid accordingly.

And for that purpose to raise money by sale or mortgage, or otherwise.

4. SUBJECT and without prejudice to the trusts hereinbefore declared, the Trustees shall permit the rents and profits of the hereditaments hereby demised to be received by the said A. B., his heirs or assigns, or other the person or persons for the time being entitled to the same hereditaments in reversion immediately expectant on the term hereby granted.

Trusts of surplus rents and profits.

IN WITNESS, &c. (t).

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

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(t) An acknowledgment of the right of any purchaser to production of this deed can be given separately under a 6d. stamp.

GROUP B.—GRANTS AND RESERVATIONS OF AND CONVEYANCES  
SUBJECT TO EASEMENTS.

No. I.

GRANT *of a* RIGHT *of* WAY *(u)*.

Parties.

THIS INDENTURE *(x)*, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Seisin of  
Vendor of  
servient  
tenement.

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments situated in the Parish of —, in the County of —, and more particularly delineated on the plan drawn on these presents and thereon coloured pink, including the road over the same lands shown on the said plan and thereon coloured brown :

Seisin of  
Purchaser of  
dominant  
tenement.

AND WHEREAS the Purchaser is seised in fee simple in possession free from incumbrances *(y)* of the hereditaments adjoining the last-mentioned hereditaments, and delineated on the plan hereto and thereon coloured green :

Agreement to  
grant right of  
way.

AND WHEREAS the Vendor has agreed to grant to the Purchaser a right of way in manner hereinafter appearing over the said road at the price of £— :

Rights of way  
appurtenant  
and in gross.

*(u)* See notes to Form No. 6, Sect. II., *sup.*

Rights of way are either in gross or appurtenant. A right of way in gross cannot be assigned ; a right of way appurtenant to any particular land must be connected with the use and enjoyment of that land, and cannot be granted for purposes wholly unconnected with it : *Ackroyd v. Smith* (1850), 10 C. B. 164 ; 19 L. J. C. P. 315, see, also *Thorpe v. Brumfitt* (1873), L. R. 8 Ch. 650 ; *North British Ry. Co. v. Park Yard Co.*, 1898, A. C. at p. 653 ; *Milner's Safe Co. v. G. N. & City Ry. Co.*, 1907, 1 Ch. 208 ; 76 L. J. Ch. 99.

Notice of  
grant.

The purchaser of an easement should have notice of the grant indorsed or annexed to one of the title deeds retained by the Vendor.

*(x)* Stamp *ad valorem* as on a conveyance on sale. If the consideration is under £500, Form No. 11, Sect. III., *sup.*, should be used to avoid the double duties imposed by the Fin. (1909-10) Act, 1910, s. 73.

*(y)* The grant should be made to the person having the legal estate, and these words show that it is not outstanding in mortgagees.

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Vendor to the Purchaser (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby grants unto the Purchaser in fee simple

Grant of right of way (z).

FULL right and liberty (*Form No. 7, Sect. II., sup.*).

[2. THE said road shall be used and enjoyed by the Purchaser and the persons deriving title under him in common with the Vendor and the persons deriving title under him, and the costs of keeping the same in good and sufficient repair shall be borne by them and the persons respectively deriving title under them in moieties [*or, in proportion to their respective user of the same, such proportion to be ascertained in case of difference by arbitration under the provisions of the Arbitration Act, 1889.*]

[Vendor and Purchaser to bear costs of repairs in equal proportions or in proportion to user.]

[2. IF the Vendor or the persons deriving title under him shall use the said road in common with the Purchaser or the persons deriving title under him, then and in such case the Vendor and the persons deriving title under him shall contribute a fair proportion of the costs incurred in keeping the same in repair, such proportion to be ascertained in case of difference by arbitration under the Arbitration Act 1889.]

[Vendor to pay proportion of repairing expenses if he uses the road.]

3. THE Vendor hereby acknowledges, &c. (*Form No. 6, Sect. III., sup.*).

Acknowledgment and undertaking.

IN WITNESS, &c.

## No. II.

RELEASE of a RIGHT OF WAY by Indorsement on the last PRECEDENT.

THIS INDENTURE, made, &c., BETWEEN the within-named C. D. (*Grantee*), of the one part, and the within-named A. B. (*Grantor*) of the other part :

Parties.

WHEREAS the said C. D. is still seised in fee simple of the land coloured green on the plan drawn on the within-written Indenture,

Recital of continued seisin of dominant

(z) If the road is to be used in common with other persons. see *Form No. 6, Sect. II., sup.* The grantor is under no liability to keep the road in repair: *Duncan v. Louch* (1845), 6 Q. B. 909; 14 L. J. Q. B. 187; Gale, 8th ed., 475 *et seq.* The variations in the text in square brackets are intended to meet the case where the grantor has expressly agreed to bear part of the expenses.

Repairs of road.

and servient  
tenements  
respectively  
and agreement  
for release.

and the said A. B. is still seised in fee simple of the lands coloured pink and brown on the said plan :

AND WHEREAS the said C. D. has agreed in consideration of the sum of £—— to release the said right of way in the manner hereinafter appearing :

Release of  
right of way.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration, &c., the said C. B., As Beneficial Owner, hereby releases unto the said A. B. in fee simple

Parcels.

ALL THAT the right of way granted by the within-written Indenture,

To THE INTENT that the same shall forthwith cease and be extinguished.

IN WITNESS, &c.

### No. III.

CONVEYANCE of a *PLOT of land with a HOUSE recently erected and with a RIGHT OF WAY in common with occupiers of OTHER HOUSES.*

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Seisin of  
Vendor and  
agreement for  
sale.

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described and also of the private road hereinafter mentioned, and has agreed to sell the said hereditaments, together with a right of way over the said road, to the Purchaser in fee simple free from incumbrances at the price of £—— :

Conveyance of  
land and right  
of way.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser,

FIRST, ALL THAT (*Form No. 6, Sect. II., sup., which includes the* Parcels.  
*grant of a right of way subject to the liability of the Purchaser*  
*to pay a proportion of the repairing expenses. If the right of way*  
*is already appurtenant, see variation to the same Form),*

To HOLD unto and To THE USE of the Purchaser in fee Habendum.  
 simple (a).

(*Add acknowledgment and undertaking, Form No. 6, Sect. III.,*  
*also Form No. 11, Sect. III., if required.)*

IN WITNESS, &c.

#### No. IV.

CONVEYANCE of a PLOT of LAND to the USE that the  
 VENDOR may have a right of way over it and subject  
 thereto to the USE of the PURCHASER in fee simple (b).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. Parties.  
 (hereinafter called the Vendor), of the one part, and C. D., of,  
 &c. (hereinafter called the Purchaser), of the other part :

WHEREAS the Vendor is seised in fee simple in possession free Seisin of  
Vendor of  
both property  
conveyed and  
retained.  
 from incumbrances of the hereditaments hereinafter described  
 and delineated on the plan drawn on these presents and thereon  
 coloured pink and blue, and also of the adjoining hereditaments  
 shown on the said plan and thereon coloured green :

---

(a) If desired, an express covenant by the purchaser to repair may be  
 added in the following form, but being a positive covenant will not run with  
 the land, see, *Haywood v. Brunswick Building Society* (1881), 8 Q. B. D. 403 ;  
 51 L. J. Q. B. 73 ; *Re Nisbet and Potts*, 1905, 1 Ch. at p. 397 ; 74 L. J. Ch.  
 310 ; 1906, 1 Ch. 386 ; 75 L. J. Ch. 238 :—

2. THE Purchaser hereby covenants with the Vendor that Covenant by  
grantee to pay  
proportion of  
expense of re-  
pairing road.  
 until the said road shall become a public highway repairable by  
 the inhabitants at large the Purchaser and the persons deriving  
 title under him will from time to time pay a fair and reasonable  
 proportion of the expense of keeping the same in repair, and if  
 any difference shall arise as to the amount to be so paid, the  
 same shall be referred to the district surveyor of the Urban [or  
 Rural] District Council of —, or if he shall decline to act.  
 then to some other person as arbitrator under the provisions of  
 the Arbitration Act, 1889.

(b) See Conv. Act, 1881, s. 62.

Agreement  
for sale.

AND WHEREAS the Vendor has agreed to sell to the Purchaser the hereditaments coloured pink and blue on the said plan and the fee simple thereof in possession free from incumbrances, but subject to the right of way hereinafter reserved over the hereditaments coloured blue on the said plan at the price of £— :

Conveyance  
reserving a  
right of way

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Vendor (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

Parcels.

ALL THAT piece of land situated in the Parish of —, in the County of —, and known as — Field, containing a— r— p— or thereabouts, and more particularly delineated on the plan drawn on these presents and thereon coloured pink and blue,

Habendum.

To hold unto the Purchaser in fee simple,

To the use that the Vendor, his heirs and assigns, owner or owners for the time being of the hereditaments coloured green on the plan hereto and his and their tenants and all persons authorised by him or them, shall have full right and liberty from time to time and at all times hereafter and for all purposes to pass and repass with or without horses, cattle or other animals, carts, carriages, motor-cars and other vehicles, over and along the road coloured blue on the plan hereto, AND, subject to the said right of way,

To the use of the Purchaser in fee simple.

(Add acknowledgment and undertaking as to documents, *Form No. 6, Sect. III.*; also *Form No. 11, Sect. III.*, if required.)

IN WITNESS, &c. (c).

No. V.

### CONVEYANCE of LAND *subject to a RIGHT OF WAY.*

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

---

(c) The purchaser, as a grantee to uses, should execute. If a duplicate is not taken, he should give a separate acknowledgment and undertaking to the vendor.

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, subject to the right of way hereinafter mentioned, and has agreed to sell the same to the Purchaser for a like estate in possession free from incumbrances, subject as aforesaid, at the price of £—— :

Seisin of Vendor subject to right of way and agreement for sale.

NOW THIS INDENTURE WITNESSETH that in pursuance, &c. (*see last Precedent*), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

Conveyance.

ALL THAT, &c. (*Forms, Sect. II., sup.*),

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple, SUBJECT to the right as heretofore exercised by the owners for the time being of the adjoining hereditaments known as the ——— Estate and their tenants and the persons authorised by them to pass and repass, &c. (*see last Precedent*).

Habendum.

Subject to right of way.

(*Add acknowledgment, &c., Form No. 6, Sect. III.; also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

GROUP C.—CONVEYANCES ON SALES OF BUILDING ESTATES AND MATTERS CONNECTED THEREWITH, INCLUDING CONVEYANCES WHERE RESTRICTIVE COVENANTS ARE IMPOSED.

No. I.

CONVEYANCE of LAND to a PURCHASER who COVENANTS not to BUILD or allow TREES or SHRUBS to EXCEED a certain HEIGHT.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part (*Recite Vendor's seisin and agreement for sale, Form No. 1, Sect. I., sup.*):

Parties

AND WHEREAS upon the treaty for the said sale it was agreed that the Purchaser should enter into the covenants on his part hereinafter contained:

Recital of agreement

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor

Conveyance.

(*the receipt, &c.*), and of the covenants by the Purchaser herein-after contained, the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

Parcels.

ALL THOSE, &c. (*Forms, Sect. II., sup.*),

Habendum.

To HOLD unto and To THE USE of the Purchaser in fee simple (*d*).

Covenant by Purchaser not to build on the land or to allow trees, &c., to grow beyond certain height.

2. THE Purchaser, for himself, his heirs and assigns (*e*), hereby covenants with the Vendor, as the owner of the land adjoining to the land hereby conveyed, his heirs and assigns, that the Purchaser and the persons deriving title under him will not at any time hereafter erect or permit to be erected any building or wall (*f*) on the land hereby conveyed, or any part thereof, exceeding six feet in height, and will not at any time hereafter permit any trees or shrubs for the time being growing in or upon the said land to exceed ten feet in height from the ground, having regard always to the present level of the said land, and will at all times, by cutting the same or otherwise, prevent such trees and shrubs from exceeding the aforesaid height.

3. (*Add acknowledgment, &c., Form No. 6, Sect. III.; also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

Restrictive covenants.

(*d*) When new restrictive covenants are given the land should not be expressed to be conveyed subject to them. In a conveyance subject to existing restrictive covenants the purchaser is entitled to a conveyance subject only to the restrictive covenants mentioned in the contract, although he has notice of others: *Re Wallis and Barnard*, 1899, 2 Ch. 515; 68 L. J. Ch. 753.

(*e*) See Wolst. Conv. Acts, 9th ed., 123, as to the necessity for these words.

(*f*) See *Bowes v. Law* (1870), L. R. 9 Eq. 636; 39 L. J. Ch. 483; *Paddington Borough Council v. A.G.*, 1906, A. C. 1; 75 L. J. Ch. 4; *Foster v. Fraser*, 1893, 3 Ch. 158; 63 L. J. Ch. 91; *Nussay v. Prov. Bill Posting Co.*, 1909, 1 Ch. 734; 78 L. J. Ch. 539.

## No. II.

CONVEYANCE *of part of a BUILDING ESTATE.* RESTRICTIVE COVENANTS *by PURCHASER as to BUILDINGS, &c. (g).*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

WHEREAS (*Form No. 1, Sect. I., sup., adding* and the Purchaser has agreed to enter into the covenants hereinafter contained) :

NOW THIS INDENTURE WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (*the receipt, &c.*) the Vendor, As Beneficial Owner, hereby grants and conveys unto the Purchaser,

[FIRST], ALL THAT piece of land situated, &c., and containing — or thereabouts, and more particularly delineated on the plan drawn on these presents and thereon coloured —, and which piece of land forms part of the — Estate of the Vendor :

[AND SECONDLY, FULL right and liberty (*h*) for the Purchaser, his heirs and assigns, to use the road on which the said piece of land abuts and the sewers under the same in common with all other persons to whom a like right has been or may hereafter be granted, but subject to the liability of the Purchaser and the persons deriving title under him to pay a rateable proportion, according to frontage, of the expense of keeping the said road and sewers in repair until the same shall become a public highway repairable by the inhabitants at large],

To HOLD unto and To THE USE of the Purchaser in fee simple.

(g) See Dissertation, pp. 116—21, as to restrictive covenants and building schemes. If the land is registered under the L. T. Acts, application must be made under L. T. Act, 1875, s. 84 (as amended by L. T. Act, 1897, Sched.), for the registration of conditions for giving effect to the restrictive covenants. There must be a deed off the register containing the covenants, to be retained by the covenantee as evidence that he is entitled to take proceedings. Under s. 84 the conditions are entered as if they were enforceable by the whole world; this is inaccurate, see *Willé v. St. John*, (No. 1), 1910, 1 Ch. 325; 79 L. J. Ch. 239,

(h) See also Form No. 6, Sect. II., *sup.*

Covenant by Purchaser as to restrictions and stipulations in first Schedule, &c.

Purchaser not to be entitled to rights of light and air restricting user of the rest of the estate (*i*).

Proviso that benefit of covenants shall not pass to future Purchasers of other plots, unless so declared in conveyance.

Acknowledgment, &c., as to documents.

2. THE Purchaser for himself (*Form No. 8, paragraph A, Sect. III., sup., adding power to the Vendor to vary the restrictions and proviso that the Purchaser shall not be liable for breaches of covenant after he has parted with the land, provisos B and C of the same Form*).

3. PROVIDED ALWAYS, that the Purchaser, his heirs and assigns, shall not be entitled to any right of access of light or air to buildings to be erected on the land hereby conveyed which would restrict or interfere with the free user of any other part of the said estate for building or any other purpose.

4. PROVIDED ALSO, that if and whenever the Vendor, his heirs or assigns, shall sell a plot of land, being a part but not the whole of the said estate then remaining vested in him or them, the right to enforce the covenants hereinbefore contained in respect of the plot of land so sold shall not pass to the Purchaser thereof unless it shall be declared in the deed of conveyance that it is intended to pass thereby (*k*).

5. THE Vendor hereby (*Form No. 6, Sect. III., sup., as to documents in second Schedule. Add Form No. 11, Sect. III., if required*).

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

Particulars of restrictions and stipulations.

1. No building shall be erected on the said plot of land other than a private dwelling-house (*l*) with suitable offices and out-buildings, and no trade or business (*m*) of any kind shall be carried on upon the said plot.

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(*i*) See *Wheeldon v. Burrows* (1879), 12 Ch. D. 31; 48 L. J. Ch. 853; *May v. Belleville*, 1905, 2 Ch. 605; 74 L. J. Ch. 678. This proviso is usually only added where the contract provides for its insertion in the conveyance.

(*k*) This proviso is suggested in order to prevent any question as to the devolution of the benefit of the covenants on purchasers of other plots. It is assumed in this case that it would be inconvenient for the vendor to deprive himself of the right to release or dispense with the covenant.

(*l*) A boarding-house is not a private residence: *Hobson v. Tulloch*, 1898, 1 Ch. 424; 67 L. J. Ch. 205; nor is a club: *McNair v. Baker*, 1904, 1 K. B. 208; 73 L. J. K. B. 120.

(*m*) As to what constitutes a breach of this covenant, see *Rolls v. Miller* (home for working girls) (1884), 27 Ch. D. 71; 53 L. J. Ch. 682; *Tod-Heathly v. Benham* (hospital) (1889), 40 Ch. D. 80; 58 L. J. Ch. 83; *Wanton v. Coppard* (boys' school), 1899, 1 Ch. 92; 68 L. J. Ch. 8.

2. Not more than one dwelling-house shall be erected on the said plot, which shall in labour and materials at lowest current market prices cost not less than £—— (n).

3. No buildings shall be placed nearer to the road in front of the said plot than is indicated by the building line shown on the said plan except porches.

(Add any other conditions which may be agreed on.)

#### THE SECOND SCHEDULE ABOVE REFERRED TO.

Particulars of documents retained in the custody of the Vendor.

#### No. III.

CONVEYANCE of a PLOT of LAND, part of ONE SECTION of an ESTATE, under development for BUILDING PURPOSES. RESTRICTIVE COVENANTS and STIPULATIONS imposed so as only to affect the PARTICULAR SECTION of the ESTATE (o). FULL forms of BUILDING RESTRICTIONS.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Parties,

WHEREAS the Vendor is seised of the plot of land described in the first Schedule hereto (being part of Section A of his ——— Estate,

Seisin of Vendor.

(n) Unless there is some context which cuts down or alters the popular interpretation of the word “house,” a building containing several residential flats constitutes only one “house” within the meaning of the word in a covenant not to erect more than a certain number of houses : *Kimber v. Admans*, 1900, 1 Ch. 412 ; 69 L. J. Ch. 296. On the other hand, the erection of residential flats is a breach of a covenant not to erect more than one dwelling-house to be used as a private dwelling-house only : *Rogers v. Hosegood*, 1900, 2 Ch. 388 ; 69 L. J. Ch. 652. A building structurally divided into two tenements on different floors with no internal communication constitutes two houses within the meaning of a covenant not to erect more than one house on the site : *Grant v. Langston*, 1900, A. C., 383, 399 ; 69 L. J. P. C. 66 ; *Ilford Park Estates v. Jacobs*, 1903, 2 Ch. 522 ; 72 L. J. Ch. 699 (distinguishing *Kimber v. Admans*, *sup.*) ; see, also *Weatheritt v. Cantlay*, 1901, 2 K. B. 285 ; 70 L. J. K. B. 799 ; *Nicholls v. Malim*, 1906, 1 K. B. 272 ; 75 L. J. K. B. 140 ; *Western v. Kensington Assessment Committee*, 1908, 1 K. B. 811 ; 77 L. J. K. B. 328.

Covenant not to erect more than one house on one plot.

(o) See Dissertation, pp. 116—21, as to restrictive covenants and building schemes ; also Form No. 8, Sect. III., *sup.*

Where the vendor imposes any restrictions on an estate a purchaser should have notice thereof indorsed on or annexed to one of the title deeds retained by the vendor,

Notice of restrictive covenants indorsed on title deed.

in the Parish of —, in the County of —) for an estate in fee simple in possession free from incumbrances, and has agreed to sell the said plot to the Purchaser for a like estate in possession free from incumbrances at the price of £— :

Agreement by Purchaser to enter into restrictive covenants which are to apply generally to Section A.

AND WHEREAS the restrictions and stipulations contained in the second Schedule hereto are intended to constitute a building scheme only so far as regards Section A of the said estate (which section is shown on the plan drawn on these presents and thereon edged with a blue line, and is hereinafter called Section A), and accordingly the Purchaser has agreed to enter into the covenants hereinafter contained :

NOW THIS INDENTURE WITNESSETH as follows :—

Conveyance of the plot described in the first Schedule, which includes rights of way and rights to use sewers.

1. IN pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Vendor (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

ALL AND SINGULAR the hereditaments described in the first Schedule hereto,

TOGETHER with the right to enforce, for the benefit of the plot of land hereby conveyed, all covenants entered into by Purchasers of other plots forming part of Section A for the observance of the restrictions and stipulations mentioned in the second Schedule hereto,

TO HOLD unto and TO THE USE of the Purchaser in fee simple.

2. PROVIDED ALWAYS, that the Purchaser, his heirs and assigns, shall not be entitled, &c. (*as in Clause 3 of last Precedent*).

Purchaser not to be entitled to rights of light and air restricting user of the rest of the estate.

3. THE Purchaser, for himself, his heirs and assigns, hereby covenants with the Vendor (and so that this covenant shall, so far as practicable, be enforceable by the owners, occupiers and tenants for the time being of the remainder of Section A or of any part thereof) that the Purchaser and the persons deriving title under him will at all times hereafter duly perform and observe all and singular the restrictive and other covenants and stipulations mentioned in the second Schedule hereto [so far as they are applicable to the land hereby conveyed (*p*)], but so, nevertheless, that this covenant shall, as regards any restrictive provision, be binding only upon the Purchaser and the persons deriving title under him during the period of his or their respective ownership of any interest in the land hereby conveyed.

Covenants by Purchaser.

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(*p*) Possibly some of the general conditions imposed on the section may not be applicable to the particular plot.

4. PROVIDED ALWAYS, that the said restrictive covenants and stipulations shall not, nor shall any of them, be deemed to affect any portion of the said estate (whether already agreed to be sold, demised, or otherwise disposed of or not) other than Section A or any other land of the Vendor, and accordingly the Vendor and the persons deriving title under him may use, dispose of, or otherwise deal with the remainder of the said estate or any part thereof not included in Section A (whether already agreed to be sold, demised, or disposed of or not) or any other land except Section A either subject to restrictive covenants and stipulations corresponding with or different from those mentioned in the second Schedule hereto or without any restrictive covenants or stipulations whatsoever.

Restrictions to affect Section A only.

5. THE Vendor hereby acknowledges the right of the Purchaser (Form No. 6, Sect. III., as to documents in the third Schedule ; add Form No. 11, Sect. III., if required).

Acknowledgment and undertaking.

IN WITNESS, &c.

#### THE FIRST SCHEDULE ABOVE REFERRED TO.

Schedule of property.

Particulars of the hereditaments hereby conveyed.

ALL THAT piece of land, having a frontage of — or thereabouts to —, and a depth of — or thereabouts on the — side thereof, and a depth of — or thereabouts on the — side thereof, being plot No. — on Section A of the Vendor's — Estate, situated at —, in the County of —, and which said piece of land is delineated on the plan drawn on these presents and thereon coloured pink (q),

Description of plot conveyed.

TOGETHER with full right and liberty for the Purchaser, his heirs and assigns, the owners and occupiers for the time being of the hereditaments hereby conveyed, or of any part thereof (in common with the Vendor and all other persons who have or may hereafter have the like right) from time to time and at all times hereafter to use the roads and footways coloured yellow on the plan hereto, but as regards the footways thereof for persons on foot only, and as regards the carriageways thereof with or without carts, carriages, motor-cars, vehicles, horses and other animals.

Grant of right of way.

(q) In the plan to this conveyance Section A will be outlined in blue, the particular plot coloured pink, and the roads to which the right of way is to extend coloured yellow.

Right to use  
Sewers.

AND TOGETHER with full right for the Purchaser, his heirs and assigns, owners and occupiers as aforesaid (subject to the approval of the Local Authority), to use the sewers now laid under the said roads and intended to be used as public sewers and to make connexions under the said roads with the said sewers, the persons exercising this right making good all disturbances and damage occasioned with all due despatch.

Schedule of  
restrictions  
and stipula-  
tions.

#### THE SECOND SCHEDULE ABOVE REFERRED TO (*r*).

Particulars of restrictive covenants and stipulations applicable to Section A.

NOTE.—In this Schedule the shortest road frontage of each plot is “the front,” and any other road frontages are “flanks.”

#### FENCES.

Fences.

1.—(i.) EACH Purchaser shall (not later than two calendar months after having been called upon by the Vendor so to do) erect and afterwards maintain good and suitable fences or enclosures as hereinafter described next to the roads and back and side division fences on the sides of his plot or plots marked T within the boundary on the plan hereto, but no person owning two or more contiguous plots shall be bound to erect or maintain fences between such plots.

(ii.) In default of any Purchaser erecting or maintaining any fence which he is to erect or maintain as aforesaid, the Vendor may at any time within twenty-one years from the date hereof erect, maintain, and repair the same, and in such event the Vendor shall have the same rights and remedies to recover the expenses incurred in so doing as are provided in these restrictions respecting the recovery by the Vendor of the expenses of maintaining or repairing roads or footpaths.

(iii.) No side division fences between front gardens shall, where in advance of the front building line of the plot, be formed otherwise than with suitable light iron hurdle railings or oak park pale fences with cleft pales, and the same shall be not less than two feet six inches high nor more than three feet high.

(iv.) No other side division fence and no back fences shall be

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(*r*) This schedule is given as an example of a modern form of building stipulations. See notes to first schedule to last Precedent.

formed otherwise than with close-boarded oak or deal fences, and all such fences shall be not less than five feet high nor more than five feet six inches high.

(v.) THE heights of all side division fences and back fences shall be measured from the natural general level of the surface of the ground at the respective bases of such fences.

(vi.) ALL deal fences shall be tarred or creosoted on both sides thereof.

(vii.) No fences or enclosures next the roads shall, where in advance of the front building line of the plot, be formed otherwise than with oak park pale fences with cleft pales (such pales to be on the side next the road) or ornamental wooden railings upon suitable red or burr brick or stone dwarf walls and with wooden gates, and such fences or enclosures and gates shall be not less than three feet high nor more than four feet high, and no such fences or enclosures (unless the Vendor otherwise permits) shall (where nearer to the road than any flank building line on the plot) be formed otherwise than with oak park pale fences with cleft pales (such pales to be on the side next the road) or be less than five feet high or more than five feet six inches high.

(viii.) THE heights of all buildings and enclosures next the roads shall be measured from the level of the footway of the adjoining road taken at the nearest point.

(ix.) No boundary fence exceeding five feet six inches high shall be erected on any part of any plot.

(x.) No Purchaser shall be entitled to require the Vendor to erect or maintain any fence or enclosure.

#### BUILDING LINES.

2.—(i.) No house shall be so erected that its principal front shall face otherwise than towards the shortest road frontage of the plot on which the same shall be erected. Building lines

(ii.) THE front building lines shown on the plan hereto shall not be advanced nor (except as hereinafter mentioned) set back unless compulsorily advanced or set back by the Local Authority, and if so compulsorily advanced or set back shall be advanced or set back only to the minimum distance necessary to comply with the requirements of the Local Authority.

(iii.) THE Vendor reserves the right from time to time at the request of the owner or owners or intended owner or owners for the time being of any plot or plots facing — Road to set back, vary, or modify the front building lines of such plot or plots, but not so as to advance the same nearer to — Road than is shown on the plan hereto.

(iv.) NOTHING shall be erected nearer to the roads than the aforesaid front building lines or the flank building lines shown on the plan hereto except as follows:—

- (a) Bay windows, balconies, porches, oriel windows, overhanging eaves, and other architectural projections none of which project more than four feet in advance of any front building line or any flank line, as the case may be.
- (b) Fences or other enclosures and gates as described in clause 1 of this schedule.

#### DESCRIPTION OF BUILDINGS

Buildings.

3.—(i.) No building shall be erected upon any plot or plots except a private dwelling-house (s) or private dwelling-houses, with or without rustic summer-houses, motor-car houses, cycle houses, and greenhouses appurtenant thereto.

(ii.) ANY such rustic summer-house, motor-car house, cycle house, and greenhouse shall not exceed ten feet in height or one hundred superficial feet in area.

(iii.) THE erection shall not be commenced of any summer-house, motor-car house, cycle house, or greenhouse until the house to which same is intended to be appurtenant shall have been built.

(iv.) No house shall be erected upon any of the plots Nos. — to — (both inclusive) on the plan hereto unless such house be detached or semi-detached.

(v.) No house planned or adapted for use or occupation in more than one tenement (s) shall be erected or allowed to remain on any plot or any portion of any plot.

(vi.) EXCEPT as aforesaid, no detached outbuilding shall be erected on any plot.

(vii.) THE erection shall not be commenced of any house or

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(s) See notes to schedule to last Precedent.

other outbuilding on any plot until drawings showing the intended elevations thereof have been submitted to and approved by the surveyor for the time being of the Vendor and copies deposited with him and his fee of 10s. 6d. paid in respect of each such house or other outbuilding.

(viii.) No external front wall of any house and no external flank wall next the road of any house erected on any plot situated at the junction of two roads shall be faced externally otherwise than with red bricks, stone, hanging tiles, rough-cast plaster, half-timber work (or tarred wood ashlar in imitation of half-timber work) or with any or all of these materials.

(ix.) No part of the roof (except flat roofs and gutters) of any house shall be covered otherwise than with red roofing tiles.

(x.) No side, back, or other wall whatsoever shall have any externally exposed part thereof faced with Fletton or Peterborough bricks or with any bricks having an appearance similar thereto.

(xi.) No house to be erected shall, with its fences and appurtenances, be allowed to remain unfinished for more than one year after the same shall have been commenced, but this shall not prevent the subsequent erection of authorised out-buildings.

#### VALUE OF BUILDINGS.

4.—(i.) No house shall be built on any plot facing — Road of less value than £—— if such house is detached, nor of less value than £—— if such house is semi-detached. Value of buildings.

(ii.) No house shall be built on any plot facing — Road of less value than £—— if such house is detached, nor of less value than £—— if such house is semi-detached or in terrace.

(iii.) No house shall be built facing — Road of less value than £—— if such house is detached, nor of less value than £—— if such house is semi-detached or in terrace.

(iv.) THE value of a house shall be taken to be its net first cost in materials and labour of construction only, calculated at the lowest current prices and exclusive of the cost of fences or enclosures of the site and also exclusive of the cost of any summer-house, motor-car house, cycle house, or greenhouse.

#### AS TO TRADES AND USER.

5.—(i.) No trade, manufacture or business shall be carried on upon any plot or plots or any part of any plot or plots, nor shall any Trades and user.

building upon any plot or plots be erected for or used for any other purpose than that of a private dwelling-house or private dwelling-houses and appurtenances thereto, but nothing herein contained shall be deemed to prevent the carrying on with the written consent of the Vendor upon any plot or plots of the practice or profession of a duly qualified physician, surgeon, or solicitor, or the erection of a brass-plate on the front door of any house.

(ii.) No earth, clay, or lime shall be burnt on any plot.

(iii.) No hut, shed, caravan, house on wheels, or other chattel adapted or intended for use as a sleeping apartment, nor any shows, booths, swings, roundabouts, or hoardings, nor any advertising station, shall be erected, made, placed or used, or be allowed to remain upon any plot or any part of any plot, nor shall the same be used for the storage of rubbish or building material, nor shall any fence or other enclosure be erected on any plot or any part of any plot unless and until the erection of the house to which such land is appurtenant shall have been commenced, or unless and until the surveyor for the time being of the Vendor shall by writing have required the Purchaser to erect such fence or enclosure, and the Vendor may remove and dispose of any such erection, fence, rubbish, building material, or other thing, and for that purpose may at any time within twenty-one years from the date hereof enter upon any plot or plots upon which a breach of this stipulation shall occur, and shall not be responsible for the safe keeping of anything so removed or for the loss thereof or any damage thereto.

(iv.) UNTIL any plot shall be duly fenced in and enclosed the Vendor may at any time within twenty-one years from the date hereof enter thereupon for the purpose of cutting and removing grass, weeds, crops, and any other thing which may in his opinion tend to give the Estate an untidy or neglected appearance, and the Vendor shall not be responsible for the safe keeping of anything so removed or for the loss thereof or any damage thereto.

#### ROADS.

##### Roads

6.—(i.) No portion of any plot shall be used as a road or way or as part of a road or way from or to any land adjoining or adjacent to the — Estate.

(ii.) UNTIL the road or roads and footpaths abutting on the

plots shall be respectively taken over by the Local Authority, no Purchaser shall allow the same to fall into disrepair, but each Purchaser shall keep in good condition and maintain the same up to the centre thereof so far as such roads and footways abut upon his plot or plots, and in default of so doing the Vendor may maintain and repair the same, in which event each Purchaser so in default shall pay to the Vendor on demand all expenses incurred in relation to such maintenance and repair or his proportion thereof (as the case may be), the amount to be ascertained, assessed, or apportioned by the surveyor for the time being of the Vendor, and such expenses or such proportion thereof as aforesaid shall, if incurred by the Vendor within twenty-one years from the date hereof, be and the same are hereby charged in his favour on the plot or plots in respect of which such sums are payable with interest thereon at the rate of £5 per cent. per annum from the date when the same shall be so incurred.

(iii.) Each Purchaser shall also pay all sums payable to the Local Authority prior to or connected with the taking over and making up of such road or roads and the sewers thereunder and paving or otherwise completing the footpaths so far as such road or roads and footpaths abut on the plot or plots purchased by him.

(iv.) No Purchaser shall obstruct any portion of the roadway or footpath by deposit of building materials or otherwise, nor disturb the surface of any such roadway or footpath except for the purpose of making connexions to sewers, drains, or mains thereunder, and any such disturbances shall be made good by the Purchaser with all due despatch.

#### EXCAVATIONS.

7. No excavations shall be made on any plot except such as Excavations. may be necessary for future buildings and drains and appurtenances thereto, nor shall any gravel, flints, sand or earth be removed therefrom without the written consent of the Vendor.

#### VARIATIONS IN PLOTTING.

8. THE Vendor may from time to time alter the plotting of any land comprised in Section A which for the time being Variations in plotting. remains unsold.

## REGISTRATION OF RESTRICTIONS.

Registration  
under L. T.  
Acts, 1875  
and 1897.

9. No application for registration of a proprietor or proprietors under the Land Transfer Acts, 1875 and 1897, or any Act amending or consolidating the same, of any plot or any part of any plot shall be made unless it contains a statement that the property in respect of which the application is made is subject to the negative restrictions and to the charges contained in this schedule, and the same shall be duly protected by proper entries in the register.

## INTERPRETATION.

Interpretation.

10. In this Schedule, where the context so admits,

(i.) THE expression "the Purchaser" includes his heirs, executors, administrators, and assigns.

(ii.) THE expression "the Vendor" includes his heirs and assigns, owners for the time being of the unsold portion of Section A of the — Estate, and any person or persons, corporation or corporations, to whom the benefit of the covenants by the Purchaser in these presents shall be expressly assigned.

(iii.) THE singular includes the plural and the masculine includes the feminine.

## THE THIRD SCHEDULE ABOVE REFERRED TO.

Particulars of documents retained in the custody of the Vendor.

## No. IV.

DEED of MUTUAL COVENANTS by PURCHASERS of Lots as to  
BUILDINGS and for INDEMNITY against a RENT (t).

Parties.

THIS INDENTURE, made, &c., BETWEEN the several persons named in the Schedule hereto, and whose hands and seals are hereunto subscribed and affixed (hereinafter called the Purchasers), of the one part, and A. B., of, &c. (hereinafter called the Vendor), of the other part:

Notice of  
covenants  
affecting  
vendor's  
land.

(t) See Dissertation, pp. 116–21, as to restrictive covenants and building schemes. Notice of this deed should be given in each conveyance to a purchaser. The purchasers should have notice of the restrictive covenants affecting the land retained by the vendor indorsed on or annexed to a title deed held by him.

WHEREAS the Vendor, being seised in fee simple of the freehold land situated, &c., and delineated and coloured pink on the plan hereto, lately put up the said piece of land for sale by public auction in Lots according to the said plan :

Recite that Vendor had put up land for sale by auction.

AND WHEREAS it was one of the conditions of the said sale that the several Purchasers should execute a deed of covenant for the observance of the restrictions and stipulations hereinafter mentioned :

Condition that Purchasers should execute deed of covenant.

AND WHEREAS some of the said Lots were sold at the said auction, and the Vendor intends to sell the remaining Lots either by public auction or private contract, as opportunities occur, subject to the like restrictions and stipulations :

Some Lots sold at auction, and intention of Vendor to sell remaining Lots.

AND WHEREAS it is intended that as the several Lots are sold and the purchases thereof respectively are completed, the names and descriptions of the several Purchasers and the numbers of the Lots purchased by them respectively shall be inserted in the Schedule hereto, and that they shall respectively execute these presents opposite to their respective names in the said Schedule :

Agreement to execute.

NOW THIS INDENTURE WITNESSETH that in consideration of the premises each of the Purchasers, for himself and his assigns, as to the Lot purchased by him and with intent to bind all persons in whom the same Lot shall for the time being be vested (but so as not to be personally liable under this covenant, so far as regards covenants which are restrictive of the user of the land, after he has parted with the said Lot (y)), hereby covenants with the others of them and their respective heirs and assigns, and also as a separate covenant with the Vendor, his heirs and assigns, that the Purchasers respectively and their respective heirs and assigns shall and will observe and perform the restrictions and stipulations hereinafter contained, so far as the same are or ought to be observed and performed by them respectively (that is to say) (z) :—

Each Purchaser covenants to observe stipulations hereinafter expressed.

1. ALL houses or buildings erected on the said Lots shall be erected so that the general line of the frontages shall not approach nearer to the road than the distance indicated on the said plan by the dotted line thereon, marked “building line,” which line is — feet from the centre of the said road, except that open

Houses erected on Lots not to approach road nearer than particular distance.

(y) It is right only to limit the personal liability in the case of restrictive covenants.

(z) For other restrictions, see second schedule to the last Precedent.

porticoes to the hall doors of any of the said houses may project any distance not exceeding — feet and any bow window to any of the said houses may project any distance not exceeding — feet from the said building line.

2. Not more than one house, and no house of less value than £——, shall be erected on any Lot (a).

Trades of  
licensed  
victualler, &c.  
not to be  
carried on.

3. THE trade or business of a licensed victualler, or seller of beer, wine or spirits, shall not be carried on upon any of the said Lots (except Lot ——) or at or upon any building to be erected thereon. (*Insert any other stipulations agreed on, and see second Schedule of last Precedent.*)

As to annual  
sum charged  
on Lots.

4. THE annual sum of £——, which is now charged upon the said Lots, as well as on other property of the Vendor under an Indenture dated, &c., shall be henceforth exclusively charged on Lot ——. And the owner or owners for the time being of that Lot shall at all times keep indemnified the other Lots, and the owners and occupiers thereof for the time being, and the Vendor and his estate and effects from and against the said rent and all claims and demands on account thereof.

Stipulations to  
be binding on  
Purchasers  
who have  
completed.

5. THE above stipulations shall be binding on the several Purchasers who have completed their purchases and executed these presents, and their respective heirs and assigns, notwithstanding that some of the Lots affected thereby may for the time being remain unsold.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals on the day and year first above written, or on the day and year set opposite to their respective signatures in the Schedule hereto.

THE SCHEDULE ABOVE REFERRED TO.

| Name and Description<br>of Purchaser. | No.<br>of Lot. | Signature. | Seal. | Date of<br>Signature. | Witness. |
|---------------------------------------|----------------|------------|-------|-----------------------|----------|
|                                       |                |            |       |                       |          |

(a) See notes to first schedule to Prec. II. of this Group.

## No. V.

GENERAL DEED of MUTUAL COVENANTS by PURCHASERS  
and VENDOR on the SALE of BUILDING PLOTS (b).

THIS INDENTURE, made, &c., BETWEEN the several persons Parties.  
named in the Schedule hereto, and whose hands and seals are  
hereunto subscribed and affixed (hereinafter called the Purchasers),  
of the one part, and A. B., of, &c. (hereinafter called the Vendor),  
of the other part :

WHEREAS the Vendor, being seised in fee simple of land in the Recitals that  
Vendor has  
laid out land  
for sale in  
plots.  
Parish of —, in the County of —, has laid out the same for  
sale in plots for building purposes according to the plan hereto  
annexed, on which plan the plots are numbered 1 to — inclusive:

AND WHEREAS some of the plots have been sold to the Pur- That some  
plots have  
been sold, and  
intention of  
Vendor to sell  
remainder.  
chasers, and the Vendor intends to sell the remaining plots as  
opportunities offer :

AND WHEREAS the Nos. of the plots sold as aforesaid (such Nos.  
corresponding to those on the said plan) are set forth in the  
Schedule hereto opposite to the names of the several Purchasers  
thereof :

AND WHEREAS upon the treaty for the said sales it was agreed Agreement.  
to execute.  
that the several Purchasers and the Vendor should enter into  
the covenants hereinafter contained :

(b) See Form No. 8, Sect. III., for a power to vary a building scheme, also  
Dissertation, pp. 116—21 *et seq.*, as to restrictive covenants and building  
schemes.

Notice of this deed should be indorsed on one of the principal title deeds, so  
that any future purchaser from the vendor may have notice of it, see Conv.  
Act, 1882, s. 3; *Tulk v. Moxhay* (1848), 2 Ph. 774; 18 L. J. Ch. 83; *Re  
Nisbet and Potts*, 1906, 1 Ch. 386; 75 L. J. Ch. 238; also cases collected in  
Wolst. Conv. Acts, 9th ed., 123. In the absence of such notice he would  
not be affected by the covenants. On any future sale by the vendor of any  
plot of land affected by the covenants, the conveyance should be made  
expressly subject to them, *e.g.* :—“To hold unto and to the use of  
the Purchaser in fee simple, subject to and with the benefit of  
the covenants as to buildings and otherwise contained in an  
Indenture dated, &c., and made, &c. (*date and parties*), so far as  
the same affect the land hereby conveyed.”

Notice to be  
indorsed on  
deed of  
covenant on  
sale of build-  
ing plots.

Purchasers and Vendor mutually covenant to observe stipulations hereinafter expressed.

NOW THIS INDENTURE WITNESSETH that each of the Purchasers as to the plot of land purchased by him, and with intent to bind all persons in whom the same plot of land shall for the time being be vested (but not so as to be personally liable under this covenant, so far only as regards covenants which are restrictive of the user of the land (c), after he has parted with the same plot), hereby for himself, his heirs and assigns, covenants with the others of them and their respective heirs and assigns, and also as a separate covenant with the Vendor, his heirs and assigns, And the Vendor, as to the remaining plots of land shown on the said plan, and with intent to bind all persons in whom the said plots of land shall for the time being be vested (but not so as to be personally liable under this covenant so far only as regards covenants which are restrictive of the user of the land (c), after he has parted with the same plots respectively), hereby for himself, his heirs and assigns, covenants with the Purchasers respectively and their respective heirs and assigns that they the said covenanting parties respectively and their respective heirs and assigns will henceforth observe and perform the stipulations hereinafter expressed so far as the same affect the plots of land respectively (that is to say) (*Set out stipulations in numbered paragraphs; see last Precedent and the second Schedule to Precedent III. of this Group, sup.*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*Same as Schedule to last Precedent.*)

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(c) It is right only to limit the personal liability in the case of restrictive covenants. The positive covenants cannot be made to run with the land: *Re Nisbet and Potts*, 1905, 1 Ch. at p. 397; aff. 1906, 1 Ch. 386; 74 L. J. Ch. 310; 75 *ib.* 238; see Dart, 7th ed., 771.

GROUP D.—GRANTS RESERVING PERPETUAL RENTCHARGES, CONVEYANCES SUBJECT TO EXISTING RENTCHARGES, AND CONVEYANCES AND RELEASES OF RENTCHARGES.

No. I.

BUILDING GRANT *at a perpetual* RENTCHARGE (*d*).  
COVENANTS *by* GRANTEE *to BUILD, and to INSURE and*  
*KEEP in REPAIR BUILDINGS, and other COVENANTS in*  
*CONNEXION with the BUILDINGS* (*e*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part:

Parties.

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described and has agreed to sell the same to the Purchaser in consideration of the perpetual yearly rentcharge hereinafter limited and of the covenants by the Purchaser hereinafter contained:

Seisin of Vendor and agreement for sale.

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the rent hereinafter reserved and the covenants by the Purchaser hereinafter contained, the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

Conveyance.

ALL THAT piece of land situated, &c. (*see Forms, Sect. II.*).

Parcels.

To HOLD unto the Purchaser in fee simple, To THE USE that

Habendum.

(*d*) Where the consideration for a conveyance on sale is a perpetual rentcharge the conveyance is chargeable with *ad valorem* duty on the total amount which will or may, according to the terms of sale, be payable during the period of twenty years next after the day of the date of the instrument: Stamp Act, 1891, s. 56 (2); Highmore, 2nd ed., 134. In the case in the text, the rent being £10, the stamp will be £1, *i.e.*, on £200. The conveyance should be executed in duplicate.

Stamp duty.

Where the consideration consists, as in this Precedent, wholly of a periodical payment, increment value duty is payable by five equal annual instalments, the first instalment being due one year after the conveyance: Increment Value Duty Rules, r. 16 (1). Security for payment of the duty by instalments must be given: *ib.*, (III).

Increment value duty.

(*e*) Grants at a fee farm rent, as they are usually called, are common in Manchester, Bristol, and Bath, and a few other places, and some Precedents of them are therefore inserted. But, as will appear from the following notes, the position of the grantor, as regards his remedies for the performance of the grantee's covenants, is inferior to that of a lessor upon a lease for a long term—say 999 years. Strictly a fee farm rent is a rent incident to tenure created before the Statute *Quia Emptores*.

Position of a grantor of land at a fee farm rent inferior to that of lessor.

the Vendor shall have in fee simple (*f*) a perpetual yearly rentcharge of £10 issuing out of the said hereditaments to be paid without any deduction, except for property or income tax, by equal half-yearly payments on the — day of — and the — day of — in every year, the first payment thereof to be made on the — day of — next, AND subject to the said rentcharge, and to the statutory and other powers and remedies for recovering and compelling payment of the same and the provisions hereinafter contained, To THE USE of the Purchaser in fee simple.

2. THE powers conferred by section forty-four of the Conveyancing and Law of Property Act, 1881, shall be exercisable as regards the rentcharge hereby reserved during the lives of the descendants now living of Her late Majesty Queen Victoria [*or* the lives of the following persons, namely —], and the lives and life of the survivors and survivor of them and for twenty-one years after the death of such survivor, And such powers may also be exercised if the law permits at any time afterwards.

3. THE Purchaser hereby covenants with the Vendor in manner following (that is to say):

(i.) THAT the Purchaser will at all times hereafter pay the said yearly rentcharge at the times hereinbefore appointed for payment thereof (*g*):

Covenants by  
grantee,

To pay  
rentcharge,

Remedies for  
rentcharge.

(*f*) S. 44 of the Conv. Act, 1881, confers on the person entitled to the rentcharge certain remedies *so far as those remedies might have been conferred by the instrument, but not further*. As regards sub-ss. 3 and 4, it is doubtful whether the remedies conferred thereby could be attached to a perpetual rentcharge without infringing the rule against perpetuities, unless restricted as in the above clause, see Wolst. Conv. Acts, 9th ed., 112.

This s. also takes effect only so far as a contrary intention is not expressed in the instrument creating the rent, and takes effect subject to the terms and provisions of the instrument, see sub-s. 5; thus, if an express remedy is provided by the instrument, it is open to question whether a corresponding collateral remedy will be implied by the Act. The remedies conferred by the Act do not prevent recourse to other remedies: *Searle v. Cooke* (1890), 43 Ch. D. 519, 533; 59 L. J. Ch. 259; hence, s. 5 of 4 Geo. 2, c. 28, which applies to chief rents, is not excluded. In the absence of any express provision, the Court has power when a rentcharge is in arrear to order the arrears to be raised by sale or mortgage of the inheritance: *Re Tucker*, 1893, 2 Ch. 323; 62 L. J. Ch. 442; *Hambro v. H.*, 1894, 2 Ch. 564; 63 L. J. Ch. 627. But such an order will not be made if a term of years is vested in trustees upon the usual trusts for this purpose: *Hall v. Hurt* (1861), 2 J. & H. 76; *Blackburne v. Hope Edwardes*, 1901, 1 Ch. 419; 70 L. J. Ch. 99; see also Wolst. Conv. Acts, 9th ed., 112.

(*g*) The remedy under the covenant is lost after 12 years under R. P. L. Act, 1874, s. 1: *Shew v. Compton*, 1910, 2 K. B. 370. It is doubtful

Covenant to  
pay a

(ii.) THAT the Purchaser or the persons deriving title under him will within twelve calendar months next after the date of these presents, at his or their expense, under the inspection and to the satisfaction of the architect of the Vendor, complete so as to be fit for habitation the messuage now in course of erection upon the land, the said messuage to be, when completed, of the value of £—— at least :

To complete a dwelling-house within twelve calendar months,

(iii.) THAT the Purchaser will at all times hereafter keep the said messuage and all boundary walls and drains belonging thereto, in good and tenantable repair and condition, and will permit the Vendor and all persons authorised by him, once in every year in the daytime, on giving to the tenant or occupier for the time being of the premises at least one week's notice in writing of his intention so to do, to enter into and upon the premises in order to examine the condition thereof :

To keep in repair,

To permit grantor to enter and view,

(iv.) THAT the Purchaser will at all times insure and keep insured against loss or damage by fire the said messuage in the — Office, or some other public insurance office, in the sum of £—— at least, and will on demand produce to the Vendor the policy or policies of insurance, and the receipt for the premium payable in respect thereof for the current year, and will whenever any loss or damage by fire shall happen to the said messuage or any part thereof forthwith expend the money received under such insurance as aforesaid, and also such other

To insure against fire and pay premiums of insurance, and produce policy and receipts.

---

whether the burden of a covenant to pay a rentcharge runs with the land, but independently of covenant the owner of a rentcharge which is in arrear may bring an action of debt to recover the arrears against the *terre-tenant*, i.e., the owner of the freehold for the time being : *Thomas v. Sylvester* (1873), L. R. 8 Q. B. 368 ; 42 L. J. Q. B. 237 ; *Christie v. Barker* (1884), 53 L. J. Q. B. 537 ; *Searle v. Cooke* (1890), 43 Ch. D. 519 ; 59 L. J. Ch. 259. It is no defence to an action for the whole amount of the rentcharge that the annual profits fall short of that amount : *Pertwee v. Townsend*, 1896, 2 Q. B. 129 ; 65 L. J. Ch. 659. But if the owner, finding that the annual value is not equal to the rentcharge, relinquishes possession, he cannot be sued after such relinquishment : *Re Blackburn, &c. Building Society* (1889), 42 Ch. D. 343 ; 59 L. J. Ch. 183. A mere tenant for years cannot be sued : *Re Herbage Rents Charity*, 1896, 2 Ch. 811 ; 65 L. J. Ch. 871 ; but the estate of a road authority in a road is a sufficient interest to constitute them *terre-tenants* : *Foley's Charity v. Dudley Corpn.*, 1910, 1 K. B. 317 ; 79 L. J. K. B. 410. If a person grants land in fee reserving a rentcharge, and the grantee is evicted from part of the land by title paramount, the rent is apportionable, and this applies to a rent limited to the grantor by way of use : *Co. Lit.* 148 b ; *Hartley v. Maddocks*, 1899, 2 Ch. 199 ; 68 L. J. Ch. 496.

perpetual rentcharge.

When apportionable.

money as may be necessary for the purpose, in rebuilding or reinstating the same (*h*).

Restrictive  
covenants by  
Purchaser.

4. THE Purchaser for himself, his heirs and assigns (with intent to bind all persons in whom the land hereby conveyed shall for the time being be vested, but so as not to be personally liable for the breach of any restrictive covenant after he has parted with the said land), hereby further covenants with the Vendor in manner following (that is to say):—

(i.) THAT the Purchaser will not alter or permit to be altered the external plan or elevation of the said messuage without the previous consent in writing of the Vendor, nor will without such consent as aforesaid erect upon the said land any other messuage or building than the said messuage now in course of erection as aforesaid except a motor-house, stable, or coach-house, or greenhouse, or conservatories in connexion therewith:

(ii.) THAT the Purchaser will not at any time without such consent as aforesaid carry on or permit to be carried on upon the premises any trade or business whatsoever, or use or permit the same to be used for any other purpose than as a private dwelling-house (*i*). (*Add or substitute any other restrictive covenants which may be agreed on, see second Schedule to Precedent III. of Group C., p. 570, sup.*)

Power for  
grantor in  
case of breach  
of covenant as  
to building,

5. PROVIDED ALWAYS (*k*), that if the said messuage shall not be completed within twelve calendar months from the date hereof pursuant to the foregoing covenant in that behalf, or if the said

Covenants to  
build, repair,  
&c., in fee  
farm grant do  
not run with  
land.

(*h*) The covenants to build, repair, and insure, &c., do not run as to the burden of them with the land nor as to the benefit of them with the rent, and cannot be made to do so either at law or in equity. Consequently, an assign of the rent cannot sue, nor can an assign of the land be sued on them: *Haywood v. Brunswick Building Society* (1881), 8 Q. B. D. 403; 51 L. J. Q. B. 73; *Re Nisbet and Potts*, 1905, 1 Ch. at p. 397; 74 L. J. Ch. 310; aff. 1906, 1 Ch. 386; 75 L. J. Ch. 238. This does not, however, affect the power of re-entry, see clause 4, which is made exercisable, not on the breach of a covenant which has ceased to be enforceable, but on the happening of specific events.

Power of  
re-entry.

Restrictive  
covenants,  
how and by  
and against  
whom they can  
be enforced.

(*i*) The restrictive covenants in the above Precedent are intended to prevent the value of the land retained by the grantor from being depreciated by the acts prohibited. They can be enforced by injunction against the grantee, and all persons deriving title under him as volunteers or as purchasers with notice.

Power of  
re-entry.

(*k*) This is a power taking effect under the Statute of Uses, and is exercisable by the owner of the rent for the time being; also, s. 6 of the R. P. Act, 1845, enables a right of entry, whether immediate or future and whether vested or contingent, to be disposed of by deed. It seems that the power

messuage shall be destroyed or damaged by fire, or shall fall into disrepair, and the Purchaser shall fail to rebuild or repair the same for the space of three calendar months after a notice in writing requiring him so to do shall have been given to him, or left at or upon the premises hereby conveyed by or on behalf of the Vendor, then and in such case and so often as the same shall happen and notwithstanding the waiver of any previous default, the Vendor may at any time during the lives of the descendants now living of Her late Majesty Queen Victoria [*or of the Vendor and Purchaser, and the following persons, namely (names)*], or the lives or life of the survivors or survivor of them, or within twenty-one years after the death of such survivor (*h*), enter into and upon the premises and execute and do such works, acts, and things thereon as shall be necessary or proper for the completion of the said messuage or for rebuilding or repairing the same, as the case may require, and may remain in the possession or receipt of the rents and profits of the premises until thereby or otherwise all sums of money expended by the Vendor or the persons deriving title under him in or about such works, acts, and things as aforesaid, together with all costs and expenses occasioned by the exercise of this power, shall be fully paid and satisfied.

repairs, &c., to enter and do necessary work.

6. (*Acknowledgment and undertaking by Vendor as to documents, Form No. 6, Sect. III. (m).*)

7. (i.) THE expressions "Vendor" and "Purchaser" shall in these presents be deemed to include, besides the said A. B. and

Interpretation.

cannot be exercised in respect of a breach of condition occurring before conveyance: *Hunt v. Bishop* (1853), 8 Exch. 675; 22 L. J. Ex. 337 (on appeal as *Hunt v. Remnant* (1854), 9 Exch. 635; 23 L. J. Ex. 135); *Cohen v. Tannar*, 1900, 2 Q. B. 609; 69 L. J. Q. B. 904; but see Challis, R. P., 2nd ed., p. 67 (n.). In such case it is at the election of the person then entitled to enter whether he will take advantage of the breach of condition, see, *Jenkins v. Jones* (1882), 9 Q. B. D. at p. 131; 51 L. J. Q. B. 438. If on a sale of the rent the purchaser finds that a breach has been committed, he should call upon the vendor to exercise the power before the rent is assigned.

(l) This limit is inserted in order to prevent an infringement of the rule against perpetuities, see, *L. & S. W. Ry. Co. v. Gomm* (1882), 20 Ch. D. 562; 51 L. J. Ch. 530; *Dunn v. Flood* (1884), 25 Ch. D. 629; 28 *ib.* 586; 53 L. J. Ch. 537; 54 *ib.* 370; *Re Hollis' Hospital and Hague*, 1899, 2 Ch. 540; 68 L. J. Ch. 673.

(m) The contract should expressly provide for the retainer of any documents to be kept by the vendor. Apart from such a provision it would seem that the purchaser is entitled to them: *Whitfield v. Faussel* (1749), 1 Ves. Sen. at p. 394.

C. D., their respective heirs and assigns where the context so admits.

(ii.) THE provisions of section sixty-seven of the Conveyancing and Law of Property Act, 1881, shall apply to all notices required to be served hereunder.

8. (*Add declaration that the conveyance does not form part of another transaction (n), Form No. 11, Sect. III., sup., if required.*)

IN WITNESS, &c.

## No. II.

BUILDING GRANT *at a perpetual* RENTCHARGE *by a* TENANT  
FOR LIFE under SECTION 10 or SECTION 57 of the S. L. ACT,  
1882 (o).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*tenant*

(n) See first note to this Precedent. If the consideration for the purpose of stamp duty is more than £500, this clause will be omitted.

Apportion-  
ment of per-  
petual rent-  
charge.

If several houses are to be built the purchaser of the land should stipulate for the insertion of the following provision :—

(i.) PROVIDED ALWAYS that on the completion to the reasonable satisfaction of the Vendor's Surveyor of each of the houses hereinbefore covenanted to be erected the yearly rentcharge of £— hereinbefore reserved shall thereupon by virtue of this provision be apportioned between the several houses in like manner as if a yearly rentcharge of £— had been hereby reserved in respect of each house and the land held therewith and the covenants by the Purchaser herein contained and the powers and provisions hereof (whether express or implied) shall be apportioned accordingly.

(ii.) THE certificate of the Vendor's Surveyor (which shall be paid for by the Purchaser) that his requirements have been complied with shall be conclusive evidence of the aforesaid apportionment.

(o) S. 10 enables the Court to make an order authorising the tenant for life to make building grants at fee farm rents; and s. 57 authorises the insertion in a settlement of additional powers, which will take effect under the Act. A grant made under either of these powers operates as a common law conveyance, and not as an appointment under the Statute of Uses. The S. L. Act, 1890, s. 9, gives a statutory effect to the reservation of rent by the grant and incorporates s. 44 of the Conv. Act, 1881. In the above Precedent the reservation of the rent is by way of use, so as to make the power of re-entry, to remedy breaches, operate under the Statute of Uses.

If the grant is made under an order of the Court, care must be taken that the provisions inserted in it are authorised by the terms of the order.

for life) (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

WHEREAS by an Indenture of Settlement dated, &c., and made, &c., the land hereinafter described was (with other hereditaments) conveyed to uses under which the Vendor is now tenant for life in possession, and X. and Y. are the trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890 :

Recital of Settlement.

AND, &c. (*Recite clause in Settlement enabling tenant for life to make building grants at fee farm rents, or, as the case may be, the Order of Court authorising same*) :

AND WHEREAS the Vendor has agreed to grant the land hereinafter described to the Purchaser for the considerations and in the manner hereinafter appearing :

Agreement for grant.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the rent hereinafter reserved and the covenants by the Purchaser hereinafter contained, and in exercise of the power for this purpose conferred on the Vendor by the Settled Land Acts, 1882 to 1890, and the recited Order [*or by the recited Settlement*], and of every other power (if any) him enabling, the Vendor, As Beneficial Owner, hereby grants unto the Purchaser

Conveyance.

ALL, &c. (*Forms in Sect. II., sup.*).

Parcels.

To HOLD unto the Purchaser in fee simple,

To THE USE that there shall be reserved out of the land hereby granted a perpetual yearly rentcharge of £—, to be paid without any deduction (except for property or income tax) by equal half-yearly payments on the — day of — and the — day of — in every year, the first payment to be made on the — day of — next, and which rentcharge shall go and remain To the Uses and subject to the powers and provisions which immediately before the execution of these presents were subsisting with respect to the land hereby granted (*p*), AND subject to the said rentcharge and to the statutory and other powers and remedies for recovering and compelling payment of the same and the provisions hereinafter contained, To THE USE of the Purchaser in fee simple.

Reservation of perpetual rentcharge.

2. PROVIDED ALWAYS, that so far as regards the reversion or remainder (*Form No. 1, Sect. III., sup.*).

Proviso cutting down implied covenants for title.

(*p*) See S. L. Act, 1890, s. 9, as to these words; also S. L. Act, 1882, ss. 2 (10) (i.), (iii.), 10, 24.

Interpretation.

3 to 6 (*Covenants and power of re-entry and acknowledgment and undertaking as to documents, as in last Precedent, paragraphs 2—5.*)

7. (i.) WHERE the context admits in these presents, the expression “the Vendor” shall be deemed to include his successors in title and assigns, and the expression “the Purchaser” shall be deemed to include, his heirs and assigns.

(ii.) THE provisions of section sixty-seven of the Conveyancing and Law of Property Act, 1881, shall apply to all notices required to be served hereunder.

8. (*If the consideration is under £500, see first and last notes to last Precedent, insert Form No. 11 of Sect. III., sup.*)

IN WITNESS, &c. (q).

No. III.

BUILDING GRANT at a perpetual RENTCHARGE by a  
TENANT FOR LIFE under a POWER contained in a  
SETTLEMENT made before 1883 (r).

Parties.

THIS INDENTURE, made, &c. (*Parties as in last Precedent*) :

Recital of Settlement.

WHEREAS by an Indenture of Settlement dated, &c., and made, &c., the land hereinafter described was (with other hereditaments) conveyed to uses under which the Vendor is now tenant for life in possession :

AND, &c. (*Recite power for the Vendor to make building grants at fee farm rents and for that purpose to revoke uses, &c.*):

Agreement for grant.

AND WHEREAS the Vendor has agreed to make such appointment and grant as hereinafter appearing :

NOW THIS INDENTURE WITNESSETH as follows :—

Revocation of uses of Settlement, and appointment and grant of land to uses.

1. IN pursuance of the said agreement and in consideration, &c., and in exercise of the power for this purpose contained in the recited Settlement and of every other power (if any) him enabling, the Vendor, As Beneficial Owner, hereby Revokes the uses, trusts, powers and provisions which immediately before the execution of these presents were subsisting under the recited Settlement as regards the land hereinafter described, and APPOINTS AND GRANTS that

(q) This conveyance should be executed in duplicate.

(r) A power to make building grants in a settlement made before the S. L. Act, 1882, can only take effect as an appointment under the Statute of Uses. In many cases the power will be given to the trustees and made exercisable with the consent of the tenant for life. The trustees will then be the vendors and the tenant for life will join to consent.

ALL THAT, &c. (*Forms in Sect. II., sup.*), shall henceforth go, remain and be

TO THE USE, &c. (*as in last Precedent to the end*).

IN WITNESS, &c. (*s.*).

#### No. IV.

#### BUILDING GRANT *at a perpetual* RENTCHARGE *by* MORTGAGEE *and* MORTGAGOR (*t.*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Mortgagee), of the 1st part, C. D., of, &c. (hereinafter called the Vendor), of the 2nd part, and E. F., of, &c. (hereinafter called the Purchaser), of the 3rd part :

WHEREAS by an Indenture of Mortgage (*Recite Mortgage by Vendor to Mortgagee for £700, as in Form No. 2, Sect. I., sup.*) :

AND WHEREAS the Vendor has agreed to make such grant to the Purchaser as hereinafter appearing in consideration of the sum of £500 and of the rent and covenants hereinafter reserved and contained :

AND WHEREAS the said principal sum of £——, with the current interest thereon, is still owing to the Mortgagee on the security of the recited Mortgage, and he has agreed to join in these presents in manner hereinafter appearing on receiving the sum of £500 in part discharge of his said mortgage debt and upon having the sum of £200 (the balance thereof) secured by the rentcharge hereinafter limited :

NOW THIS INDENTURE WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £500 now paid by the Purchaser by the direction of the Vendor to the Mortgagee (the receipt and payment of which sum the Mortgagee and the Vendor hereby respectively acknowledge) and of the rentcharge hereby reserved and the covenants by the Purchaser hereinafter contained, the Mortgagee, at the request of the Vendor and As Mortgagee, and according to his estate, hereby conveys and releases and the Vendor, As Beneficial Owner, hereby grants and confirms unto the Purchaser

---

(s) This conveyance should be executed in duplicate.

(t) A mortgagee would not, of course, join in a transaction of this kind unless the rent is well in excess of the interest payable in respect of the balance of the mortgage debt.

ALL THAT, &c. (*continue as in Precedent I. of this Group, p. 581, but substituting the word "Mortgagee" for that of "Vendor"*).

2 to 5. (*As in paragraphs 2 to 5 of Precedent I. of this Group, substituting "the Mortgagee" for "the Vendor" and omitting the undertaking for safe custody.*)

Declaration  
that rent shall  
be subject to  
redemption,  
and shall  
be paid  
to Mortgagor  
until notice.

6. THE rentcharge hereinbefore reserved and the benefit of the covenants and provisions hereinbefore contained shall be subject to the same right of redemption as was subsisting under the recited Mortgage in the land hereby granted immediately before the execution of these presents, and shall be redeemable on payment of the sum of £200 (the balance of the said mortgage debt of £700) and the interest thereon, AND the Purchaser shall pay the said rentcharge to the Vendor until the Mortgagee shall by a notice in writing require the payment thereof to himself, and until such notice the Vendor shall have the like remedies for recovering the said rentcharge and for enforcing performance of the Purchaser's covenants as if the Vendor were the Mortgagee.

7. (i.) THE expressions "the Mortgagee," "the Vendor," and "the Purchaser" in these presents shall be deemed to include the persons respectively deriving title under them where the context so admits.

(ii.) THE provisions of section sixty-seven of the Conveyancing and Law of Property Act, 1881, shall apply to all notices required to be served hereunder.

8. (*Add Form No. 11, Sect. III., sup., if the consideration is under £500; see first and last notes to Precedent I. of this Group.*)

IN WITNESS, &c. (v).

## No. V.

CONVEYANCE *on the CREATION and SALE of a PERPETUAL RENT to be charged on the Vendor's Land. COVENANTS by VENDOR to pay RENT and as to BUILDINGS. POWER for PURCHASER to ENTER to remedy breaches (r).*

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c. (hereinafter

(u) This conveyance should be executed in duplicate.

(v) It is undesirable, as is sometimes done, to include grants of several rent-charges issuing out of several plots in one deed. For the sake of the title both to the land and to the rent there should be a separate conveyance of each plot.

called the Purchaser), of the 2nd part, and E. F., of, &c. (*grantee to uses*), of the 3rd part :

WHEREAS the Vendor has agreed to sell to the Purchaser for the sum of £—— a perpetual yearly rentcharge of £——, to be charged on the land hereinafter described, and to be further secured in the manner hereinafter appearing :

Recital of agreement for sale of rent-charge.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the said E. F.

Conveyance.

ALL THAT, &c. (*Forms in Sect. II., sup.*).

Parcels.

TO HOLD unto the said E. F. in fee simple,

TO THE USE that the Purchaser shall have in fee simple a perpetual yearly rentcharge of £—— to be charged on and issuing out of the land hereby conveyed, and to be paid, &c. (*as in Precedent I. of this Group, p. 581*), AND subject to the said rentcharge and to the provisions hereinafter contained,

Habendum.

TO THE USE of the Vendor in fee simple. (*Covenants by Vendor to pay rent, complete building, repair and insure, power for Purchaser to enter to remedy breaches, acknowledgment and undertaking by Vendor as to documents and interpretation clause, as in Precedent I. of this Group, sup., substituting throughout "the Vendor" for "the Purchaser" and "the Purchaser" for "the Vendor," and omitting the restrictive covenants.*)

IN WITNESS, &c. (*c.*).

## No. VI.

### CONVEYANCE of FREEHOLD PROPERTY *subject to an existing* PERPETUAL RENTCHARGE.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Parties.

---

(*x*) This deed should be executed in duplicate; it is desirable to indorse a memorandum of its execution on one of the title deeds retained by the vendor.

Recital of  
building grant.

WHEREAS by an Indenture (*y*) dated, &c., and made between G. H. of the one part and the Vendor of the other part, the land hereinafter described was conveyed To the Use that the said G. H. should have in fee simple a perpetual rentcharge of £—— issuing out of the said land, and subject thereto to the use of the Vendor in fee simple, and the said Indenture contains a covenant by the Vendor for the payment of the said rent and certain other covenants by him as to buildings and otherwise :

That Vendor  
has erected a  
dwelling-  
house.

AND WHEREAS since the execution of the said Indenture the Vendor, pursuant to a covenant therein contained, has erected a messuage upon the said land :

Agreement  
for sale.

AND WHEREAS the Vendor has agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession subject to the said rentcharge and to the said covenants and conditions, but otherwise free from incumbrances, at the price of £—— :

NOW THIS INDENTURE WITNESSETH as follows :—

Conveyance.

1. In pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

Parcels.

ALL THAT, &c. (*Forms in Sect. II., sup.*), Together with the messuage, known as ——, which has been erected thereon as aforesaid,

Habendum.

To HOLD unto and To THE USE of the Purchaser in fee simple, subject to the said rentcharge of £—— and all powers and remedies for recovering the same, and subject also to the covenants of the Vendor (*z*) contained in the recited Indenture.

Covenant by  
Purchaser to  
indemnify  
Vendor against  
rent and  
covenants.

2. THE Purchaser (with the object of affording to the Vendor, his heirs, executors and administrators, a full and sufficient indemnity, but not further or otherwise (*a*)) hereby covenants with the Vendor that the Purchaser, his heirs and assigns, will henceforth pay the said rentcharge and observe and perform the covenants by the Vendor contained in the recited Indenture and

(*y*) See Prec. I. of this Group and the notes thereto. The stamp will be *ad valorem* on the purchase-money; no stamp is charged in respect of the rentcharge, *cf. Swayne v. I. R. Commrs.*, 1900, 1 Q. B. 172; 69 L. J. Q. B. 63; *Alpe*, 11th ed., 110; *Highmore*, 2nd ed., 136.

(*z*) The affirmative covenants will not, of course, run with the land, but may in some cases be enforceable under the power of re-entry.

(*a*) See *Re Poole and Clarke*, 1904, 2 Ch. 173; 73 L. J. Ch. 612, see also *Harris v. Boots, Cash Chemists, Ltd.*, 1904, 2 Ch. 376; 73 L. J. Ch. 708.

keep indemnified the Vendor, and his estate and effects, from and against all claims and demands on account thereof.

IN WITNESS, &c.

### No. VII.

CONVEYANCE of ONE of several Houses subject to a PROPORTIONATE PART of a PERPETUAL RENTCHARGE reserved in respect of ALL the HOUSES by the ORIGINAL GRANT (b).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part (*Recite building grant to Vendor, subject to perpetual rentcharge of £12*):

Parties.

AND WHEREAS pursuant to a covenant for that purpose contained in the said Indenture the Vendor has erected and completed four dwelling-houses on the piece of land thereby conveyed, or on parts thereof:

That grantee has erected four houses.

AND WHEREAS the Vendor has agreed to sell to the Purchaser the dwelling-house and hereditaments hereinafter described (being one of the said four dwelling-houses) and the fee simple thereof in possession, subject to the payment of the apportioned yearly rentcharge of £3, part of the said yearly rentcharge of £12 reserved by the said Indenture, at the price of £—:

Agreement for sale.

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

Conveyance.

ALL THAT messuage, &c. (*see Form No. 6, Sect. II., sup.*),

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple, subject to the provisions hereinafter contained.

2. As between the hereditaments hereby conveyed and the other hereditaments comprised in the recited Indenture, the hereditaments hereby conveyed shall henceforth be subject to the payment of the yearly rent-charge of £3, part of the said yearly rent-charge of £12 reserved by the recited Indenture in exoneration

Apportionment of rent-charge.

(b) As the owner of the rentcharge is not a party to the conveyance, the apportionment can only take effect as between the vendor and purchaser, and does not affect the right of the owner of the rentcharge to exercise his powers in respect to any part of the property comprised in the original conveyance which limited the rentcharge.

Apportionment.

As to the stamp, see first note to last Precedent; the Inland Revenue do not claim any additional stamp duty by reason of the equitable charge.

Stamp.

of the other hereditaments, and the said other hereditaments shall be subject to the payment of the residue of the said rentcharge of £12 in exoneration of the hereditaments hereby conveyed.

Covenants by Purchaser to pay his proportion of rent-charge (*bb*),

and observe covenants applicable to house purchased,

and charge of house with money payable under covenant.

Similar covenants and charge by Vendor as to houses not sold.

Acknowledgment, &c., as to building grant.

3. THE Purchaser hereby covenants with the Vendor that the Purchaser, and the persons deriving title under him, will at all times hereafter pay the said yearly rentcharge of £3, part of the said yearly rentcharge of £12 reserved by the recited Indenture, and observe and perform the covenants in the said Indenture contained, so far as the same relate to the hereditaments hereby conveyed, and will keep indemnified the Vendor and the persons deriving title under him, and his estate and effects, from and against all claims and demands whatsoever by reason of the non-payment of the said yearly rentcharge of £3, or the breach of the said covenants so far as the same relate as aforesaid, AND the Purchaser hereby charges the hereditaments hereby conveyed with the payment of all such money (if any) as shall become payable under the foregoing covenant.

4. THE Vendor hereby covenants with the Purchaser that the Vendor, and the persons deriving title under him, will at all times hereafter pay the yearly rentcharge of £9 (being the residue of the said yearly rentcharge of £12) and observe and perform the covenants in the recited Indenture contained, so far as the same relate to such of the hereditaments comprised in the said Indenture as are not hereby conveyed, and will keep indemnified the Purchaser, and the persons deriving title under him, and his estate and effects, from and against all claims and demands whatsoever by reason of the non-payment of the said yearly rentcharge of £9, or the breach of the said covenants so far as the same relate as last aforesaid, AND the Vendor hereby charges the last-mentioned hereditaments with the payment of all such money (if any) as shall become payable under his covenant hereinbefore contained.

5. THE Vendor hereby acknowledges the right of the Purchaser to production of the recited Indenture (*and any other documents retained*) and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

IN WITNESS, &c. (*c*).

(*bb*) The remedy on the personal covenant cannot be enforced after 12 years from the last payment without acknowledgment: *Shaw v. Crompton*, 1910, 2 K. B. 370.

(*c*) This conveyance should be executed in duplicate. Add Form No. 11, Sect. III., *sup.*, if the purchase-money does not exceed 500*l*.

## No. VIII.

CONVEYANCE of ANOTHER of the HOUSES referred to in the last Precedent subject to a PROPORTIONATE PART of the RENTCHARGE (*d*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part (*Recite building grant, defining it as "the Conveyance of 1901," and erection of houses, as in last Precedent*) :

Parties.

AND WHEREAS by an Indenture (hereinafter called the Conveyance of 1902), dated, &c., the Vendor conveyed one of the said dwelling-houses unto and To the Use of the said C. D. in fee simple, And it was thereby provided that as between the hereditaments thereby conveyed and the other hereditaments comprised in the Conveyance of 1901 the hereditaments thereby conveyed should be subject to the payment of the yearly rentcharge of £3, part of the said yearly rentcharge of £12, in exoneration of the other hereditaments, and that the said other hereditaments should be subject to the payment of the yearly rentcharge of £9, residue of the said yearly rentcharge of £12, in exoneration of the hereditaments thereby conveyed, And the Conveyance of 1902 contained mutual covenants by the Vendor and the said C. D. respectively for the payment of the said apportioned rentcharges of £3 and £9 respectively, and for the observance and performance of the covenants and conditions in the Conveyance of 1901 contained and on the grantee's part to be observed and performed so far as the same related to the hereditaments conveyed by the Conveyance of 1902, and the hereditaments retained by the Vendor respectively and for their mutual indemnity, and the indemnity of the persons respectively deriving title under them, in respect of the said apportioned rentcharges, covenants and conditions, And the Vendor and the said C. D. charged the said conveyed and retained hereditaments with all money (if any) which might from time to time become payable under their respective covenants :

Conveyance of one house subject to proportion of rentcharge.

AND WHEREAS the Vendor has agreed to sell to the Purchaser the dwelling-house and hereditaments hereinafter described

Agreement to sell another house.

(*d*) See notes to last Precedent.

(being another of the said four dwelling-houses) and the fee simple thereof in possession, subject to the apportioned yearly rentcharge of £3, part of the said yearly rentcharge of £9, apportioned as aforesaid in respect of such of the hereditaments comprised in the Conveyance of 1901 as were not conveyed by the Conveyance of 1902, at the price of £——:

NOW THIS INDENTURE WITNESSETH as follows:—

Conveyance.

1. IN pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

Parcels.

ALL THAT, &c. (*see Forms in Sect. II., sup.*),

Habendum.

To HOLD unto and To THE USE of the Purchaser in fee simple, subject to the provisions hereinafter contained.

Benefit of covenants in last-recited deed to enure to present Purchaser.

2. THE benefit of the covenants and charge by the said C. D. contained in the Conveyance of 1902 shall henceforth belong to the Purchaser, his heirs and assigns, in respect of the hereditaments hereby conveyed, as well as to the Vendor, his heirs and assigns, in respect of the hereditaments retained by the Vendor.

Further apportionment of rentcharge.

3. THE yearly rentcharge of £9 by the Conveyance of 1902 agreed to be thenceforth charged on the hereditaments not thereby conveyed shall be henceforth apportioned so that the yearly rentcharge of £3, part thereof, shall be payable by the Purchaser, or the persons deriving title under him, in respect of the hereditaments hereby conveyed in exoneration of the hereditaments retained by the Vendor, and the yearly rentcharge of £6, residue thereof, shall be payable by the Vendor, or the persons deriving title under him, in respect of the said retained hereditaments in exoneration of the hereditaments hereby conveyed.

Covenants by Purchaser to pay his proportion of rentcharge and to observe covenants.

4. THE Purchaser hereby covenants with the Vendor that the Purchaser, or the persons deriving title under him, will at all times hereafter pay the said yearly rentcharge of £3 payable in respect of the hereditaments hereby conveyed, and observe and perform the covenants and conditions contained in the Conveyance of 1901 so far as the same relate to the hereditaments hereby conveyed, and will keep indemnified the Vendor, and the persons deriving title under him, and his estate and effects, from and against all claims and demands whatsoever on account of the non-payment of the said rentcharge of £3 or the breach of the said covenants and conditions, so far as the same relate as aforesaid, And the Purchaser hereby charges the hereditaments hereby

Charge.

conveyed with the payment of all such money (if any) as shall become payable under the foregoing covenant.

5. THE Vendor hereby covenants with the Purchaser that the Vendor, or the persons deriving title under him, will at all times hereafter pay the said yearly rentcharge of £6 payable in respect of the hereditaments retained by the Vendor as aforesaid and observe, &c. (*same as Purchaser's covenants, mutatis mutandis, to the end, including the charge*).

Covenant by Vendor to pay his proportion of rentcharge and observe covenants.

6. THE Vendor hereby acknowledges the right of the Purchaser to production of the Conveyances of 1901 and 1902 (*and any other documents retained*), and to delivery of copies thereof, And hereby undertakes for the safe custody thereof.

Acknowledgment, &c., as to counterpart of Conveyance.

IN WITNESS, &c. (e).

### No. IX.

#### DEED containing MUTUAL COVENANTS by several PURCHASERS for PAYMENT of PROPORTIONATE PARTS of PERPETUAL RENTCHARGE and for PERFORMANCE of COVENANTS in BUILDING GRANT.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*one of the four Purchasers*), of the 1st part, C. D., of, &c. (*another of the four Purchasers*), of the 2nd part, E. F., of, &c. (*another of the four Purchasers*), of the 3rd part, and G. H., of, &c. (*the other of the four Purchasers*), of the 4th part (*Recite Indenture whereby a piece of land, &c., was granted by L. M. to N. O. in fee simple, reserving a yearly rent-charge of £12 to L. M. in fee simple, and subject to the covenant that N. O. should build four messuages on the said piece of land within a given time and according to a plan, &c.; see Precedent I. of this Group, p. 581*):

Parties.

AND WHEREAS pursuant to the covenant for that purpose contained in the recited Indenture the said N. O. erected four messuages on the land comprised in the said Indenture:

That four houses have been built on land,

AND WHEREAS the said N. O. has lately sold and conveyed the said messuages to the several parties hereto (hereinafter called the Purchasers) at apportioned parts of the said yearly rentcharge of £12, and subject to the covenants and conditions contained in the recited Indenture, and on the grantee's part to be observed and performed so far as the same relate to the premises respectively:

Sale of the houses at apportioned parts of the rentcharge.

(e) This conveyance should be executed in duplicate. Add Form No. 11, Sect. III., *sup.*, if the purchase-money does not exceed £500.

Particulars of premises sold, &c., contained in schedule.

AND WHEREAS short particulars of the hereditaments sold and conveyed to the Purchasers as aforesaid, the dates of their respective conveyances, and the amount of the apportioned yearly rentcharges reserved thereby respectively are respectively mentioned opposite to their names in the Schedule hereto :

Agreement for mutual covenants.

AND WHEREAS upon the treaty for the aforesaid sales it was agreed that the Purchasers should enter into such mutual covenants as are hereinafter contained :

NOW THIS INDENTURE WITNESSETH as follows :

Each Purchaser covenants with the others to pay apportioned rentcharge, and to observe covenants relating to premises conveyed to him, and to indemnify against apportioned rent and covenants.

1. In pursuance of the said agreement and in consideration of the premises, each of the Purchasers hereby covenants with the others of them and with each of them in manner following, that is to say, THAT each of the Purchasers, and the persons deriving title under him, will henceforth in respect of the hereditaments conveyed to him as aforesaid pay the apportioned yearly rentcharge set opposite to his name in the fourth column of the Schedule hereto and duly observe and perform the covenants contained in the recited Indenture and on the grantee's part to be observed and performed so far as the same relate to the said hereditaments, and will at all times hereafter keep indemnified the other Purchasers, and the persons respectively deriving title under them, and every of them and their respective estates and effects, from and against all claims and demands whatsoever on account of the non-payment of the said apportioned rentcharge or any part thereof, or any breach of the said covenants so far as the same relate to the said hereditaments.

Charge.

2. EACH of the Purchasers hereby charges the hereditaments conveyed to him as aforesaid with the payment of whatever money shall become payable by him or the persons deriving title under him or by his estate and effects under the foregoing covenant.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

| Name of Purchaser. | Particulars of Property. | Date of Conveyance. | Apportioned Rentcharge. |
|--------------------|--------------------------|---------------------|-------------------------|
|                    |                          |                     |                         |

## No. X.

CONVEYANCE *of* a PERPETUAL RENTCHARGE to PURCHASER.

THIS INDENTURE, made, &c., BETWEEN G. H., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part (*Recite building grant, as in last Precedent, by the Vendor to A. B.*):

Parties.

AND WHEREAS the Vendor has agreed to sell the said yearly rentcharge of £—, and the benefit of all securities for the same, to the Purchaser at the price of £—:

Agreement for sale.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration, &c. (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

Conveyance of perpetual rentcharge.

ALL THAT the said perpetual yearly rentcharge of £— limited to the Vendor in fee simple by the recited Indenture, and the benefit of the covenants by the said A. B. contained in that Indenture, and all powers and remedies whatsoever (including the power of re-entry) vested in the Vendor by virtue of the said Indenture or otherwise for enforcing the payment of the said rentcharge and the observance and performance of the said covenants,

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple.

Habendum.

(*Add Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

## No. XI.

RELEASE *of* PERPETUAL RENTCHARGE and *of* BUILDING and other COVENANTS to the OWNER in fee *of* the FREEHOLDS out of which the rent IS PAYABLE.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part (*Recite building grant by Vendor to Purchaser at a rentcharge of £5, and covenants by Purchaser as to building and otherwise, and that Purchaser has erected a house on the land*):

Parties.

Recite grant of land in fee subject to yearly rentcharge.

AND WHEREAS the Purchaser has agreed to purchase from the Vendor the said rentcharge to the intent that it may henceforth cease to be payable at the price of £—:

Agreement for release of yearly rentcharge.

Release of  
rentcharge.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys and releases unto the Purchaser in fee simple

Parcels.

ALL THAT the said yearly rentcharge of £—— limited to the Vendor in fee simple by the recited Indenture, and all powers and remedies for recovering the same when in arrear, and all covenants and conditions contained in the said Indenture and on the part of the Purchaser, or the persons deriving title under him, to be observed and performed,

Merger of  
rentcharge.

To THE INTENT that the said yearly rentcharge shall cease to be payable and forthwith merge and be extinguished in the freehold and inheritance of the hereditaments comprised in the said Indenture, and that the said covenants and conditions shall cease and determine (*Add Forms No. 6 and 11, Sect. III., sup., if required*).

IN WITNESS, &c.

GROUP E.—CONVEYANCES ON SALES IN CONSIDERATION OF DETERMINABLE RENTCHARGES; GRANTS AND RELEASES OF DETERMINABLE ANNUITIES; AND CONVEYANCE IN CONSIDERATION OF A LEASE TO BE GRANTED TO VENDOR (WITH FORM OF LEASE).

No. I.

CONVEYANCE (*f*) of FREEHOLDS to a PURCHASER in CONSIDERATION of a CAPITAL SUM, and of a LIFE ANNUITY charged on the LAND (*g*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Stamp.

(*f*) Where the consideration or part of the consideration consists of money payable periodically during a life or lives the conveyance is chargeable with *ad valorem* duty on the amount which will or may, according to the terms of sale, be payable during the period of twelve years next after the date of the instrument : Stamp Act, 1891, s. 56 (3). Hence the stamp on this deed will be £10 in respect of the gross sum, and £2 10s. in respect of the annuity, see also Fin. (1909-10) Act, 1910, s. 73.

Registration  
of life annuity.

(*g*) As it is doubtful whether a conveyance of land to the use that the vendor shall receive thereout a rentcharge for his life, and subject thereto

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, and has agreed to sell the same to the Purchaser in consideration of the sum of £1,000 and a yearly rentcharge of £20, payable to the Vendor during his life and to be secured to him in manner hereinafter appearing :

Agreement  
for sale.

NOW THIS INDENTURE WITNESSETH as follows :—

Conveyance.

1. IN pursuance of the said agreement and in consideration of the sum of £1,000 now paid by the Purchaser to the Vendor (*the receipt, &c.*), and also in consideration of the yearly rentcharge of £20 hereinafter limited, the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

ALL, &c. (*Forms, Sect. II., sup.*),

Parcels.

To HOLD unto the Purchaser in fee simple,

To THE USE that the Vendor may henceforth during his life receive a yearly rentcharge of £20, to be issuing out of the said hereditaments, and to be paid without any deduction (except for property or income tax) by equal half-yearly payments on the — day of — and the — day of — in every year, the first payment to be made on the — day of — next, AND subject to the said yearly rentcharge and to the statutory and other powers and remedies for recovering and compelling payment thereof (*h*), To THE USE of the Purchaser in fee simple.

Habendum.

2. THE Purchaser hereby covenants with the Vendor to pay to the Vendor the said yearly sum of £20 at the times and in the manner hereinbefore appointed for the payment thereof (*i*).

Covenant by  
Purchaser to  
pay annuity.

(*Add acknowledgment, &c., as to documents, if required, Form No. 6, Sect. III., sup.*)

IN WITNESS, &c.

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to the use of the purchaser, comes within the Judgments Act, 1855, s. 12, it may be prudent to register the rentcharge under that section. But the risk of omitting to do so is very small, as the conveyance reserving the rentcharge would have to be produced to a subsequent purchaser, and if he has notice of it he will be bound by it.

(*h*) See Conv. Act, 1881, s. 44.

(*i*) Apart from this covenant the purchaser would be liable as *terre-tenant*.

## No. II.

CONVEYANCE to a PURCHASER in CONSIDERATION of a LIFE ANNUITY, with *wide* POWERS for SECURING it, and with POWER for PURCHASER to buy an ANNUITY in SUBSTITUTION.

Parties. THIS INDENTURE (*k*), made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c. (hereinafter called the Purchaser), of the 2nd part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Trustees), of the 3rd part:

Recital of agreement for sale in consideration of annuity.

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, and has agreed to sell the same to the Purchaser in consideration of a yearly rentcharge of £100, payable to the Vendor during his life, and to be secured in manner hereinafter appearing:

NOW THIS INDENTURE WITNESSETH as follows:—

Conveyance.

1. IN pursuance of the said agreement and in consideration of the yearly rentcharge of £100 hereinafter limited, the Vendor, As Beneficial Owner, hereby conveys unto the Trustees

Parcels.

ALL, &c. (*see Forms in Sect. II., sup.*):

Habendum.

TO HOLD unto the Trustees in fee simple,

TO THE USE that, &c. (*Limitation of rentcharge of £100 to Vendor for his life as in last Precedent*), AND subject to the said rentcharge and to the statutory and other powers and remedies for recovering and compelling payment thereof, and also to the provisions hereinafter contained, TO THE USE of the Purchaser in fee simple.

Power to Vendor to sell or mortgage, if rentcharge in arrear.

2. IF the said yearly rentcharge of £100 or any part thereof shall at any time be unpaid for sixty days (*l*) after any of the

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(*k*) See note to last Precedent. The stamp on this deed will be £12. The provisions for securing the rentcharge do not attract additional duty: Stamp Act, 1891, s. 56 (4).

(*l*) Cf. Conv. Act, 1881, s. 44; as a general rule the powers conferred by this section (see last Precedent) would be ample.

times hereby appointed for payment thereof, the Vendor or the persons deriving title under him may at any time sell or mortgage the fee simple of the hereditaments hereby conveyed, or any of them or any part thereof, and for such purposes may by deed revoke the uses hereby declared and make such new appointments as may be required.

3. THE money to arise from any such sale or mortgage shall be paid by the Purchaser or mortgagee of the said hereditaments to the Trustees (which expression, where the context so admits, includes the survivor of them and the executors or administrators of such survivor or other the trustees or trustee for the time being hereof), Upon trust that the Trustees shall apply the same in payment to the Vendor or his assigns of all arrears of the said yearly rentcharge of £100, and all costs, charges and expenses incurred by the Vendor or his assigns on account of the non-payment of the said yearly rentcharge, or any part thereof or otherwise relating thereto, and also all costs, charges and expenses incurred by the Trustees in or about the execution of the trusts and powers of these presents, and shall invest the residue of the said money, in or upon any investments for the time being authorised by law as investments for trust money, in the names of the Trustees, with power to vary such investments for others of a like nature, and shall stand possessed of the money so invested, and the investments for the time being representing the same, Upon trust out of the income thereof, and if the income shall be insufficient, then out of capital to pay unto the Vendor or his assigns the yearly rentcharge of £—, or so much thereof as shall from time to time be in arrear, and all costs, charges and expenses incurred by the Vendor or his assigns on account of the non-payment thereof or otherwise relating thereto, and also all costs, charges and expenses incurred by the Trustees in or about the execution of the trusts and powers of these presents, and subject to the trusts hereinbefore declared, In trust for the Purchaser absolutely.

Money to be paid to Trustees.

Upon trusts for securing rentcharge, and subject thereto in trust for Purchaser.

4. UPON any sale or mortgage expressed to be made under the foregoing power, the Purchaser or mortgagee shall not, either before or after conveyance, be concerned to see or inquire whether the said rentcharge is in arrear or subsisting or otherwise as to the propriety of the sale or mortgage, or whether the money is wanted, or more than is wanted is raised.

Indemnity of Purchaser or Mortgagee.

Covenant by Purchaser to pay annuity, and to insure against fire.

5. THE Purchaser hereby covenants with the Vendor that the Purchaser, or the persons deriving title under him, will pay to the Vendor the said yearly rentcharge of £100 at the times and in the manner hereinbefore appointed for payment of the same, and also will, so long as the said yearly rentcharge shall remain charged on any buildings hereby conveyed, keep the same insured against loss or damage by fire in some public insurance office approved by the Vendor, in a sum not less than two-thirds of the amount required to rebuild the same in case of total destruction, and will on demand produce the policy or policies of insurance for the time being in force, and the receipts for the premiums in respect thereof, to the Vendor or the persons deriving title under him.

Power for Purchaser to buy annuity for Vendor for life.

6. PROVIDED ALWAYS, that if the Purchaser or the persons deriving title under him, shall at any time during the life of the Vendor purchase in the name of the Vendor a Government annuity of £100 for the life of the Vendor, or a like annuity from any insurance office approved of by the Vendor, so that the first half-yearly payment of such annuity shall be made within six calendar months after the day of payment of the yearly rentcharge hereby limited last preceding the day of the purchase of such annuity, and in case the Purchaser or the persons deriving title under him shall, on the purchase of such annuity, have paid up all arrears of the yearly rentcharge hereby limited up to and including the last-mentioned half-yearly day, and all costs, charges and expenses due in respect of the same yearly rentcharge, then and in such case the Vendor shall accept the annuity so purchased in substitution for the said yearly rentcharge, and thereupon the said rentcharge shall determine and merge in the fee simple of the hereditaments hereby conveyed, and the powers of sale and mortgaging hereinbefore contained shall cease, and the receipt of the Vendor or the persons deriving title under him for the purchased annuity shall be sufficient evidence of the cesser of the rentcharge.

7. (*Add acknowledgment, &c., as to documents, if required, Form No. 6, Sect. III., sup.*)

IN WITNESS, &c.

## No. III.

CONVEYANCE of FREEHOLDS to a PURCHASER in CONSIDERATION of an ANNUITY PAYABLE to the VENDOR and his WIFE successively for life and SECURED by the PURCHASER'S BOND (m).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Parties.

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, and has agreed to sell the same to the Purchaser in consideration of an annuity of £100 to be paid to the Vendor during his life, and after his death to E. B., his wife, if she survives him, during the residue of her life, and to be secured by the bond of the Purchaser :

Agreement for sale in consideration of annuity.

AND WHEREAS immediately before the execution of these presents the Purchaser has executed to the Vendor his bond in a sufficient penalty, bearing even date with these presents, subject to a condition thereunder written for making void the same upon payment by the Purchaser, his heirs, executors or administrators, of an annuity of £100 to the Vendor during his life, and after his death to the said E. B., if she shall survive the Vendor, during the residue of her life, and to be paid half-yearly at the times therein mentioned :

Bond to secure annuity.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the annuity of £100 secured by the said bond, the Vendor, As Beneficial Owner, hereby conveys, &c. (*Conveyance of freeholds to Purchaser in fee simple.*)

Conveyance.

IN WITNESS, &c.

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(m) See notes to Prec. I. of this Group, p. 600. The stamp on this deed will be £12: Stamp Act, 1891, s. 56 (3). A separate instrument for securing the payments is not chargeable with a higher duty than 10s.: *ib.*, sub-s. 4. Hence, the bond will bear a 10s. stamp.

Stamp.

Instead of a bond, it is now more usual to take a grant of an annuity with a covenant to pay. The recitals may be altered to meet this.

## No. IV.

GRANT of an ANNUITY charged on FREEHOLD LAND in possession during the life of the PURCHASER (u).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: .

Recite agreement for sale of annuity.

WHEREAS the Vendor has agreed to sell to the Purchaser an annuity of £80 for the life of the Purchaser, and to be secured in manner hereinafter mentioned, at the price of £——:

NOW THIS INDENTURE WITNESSETH as follows:—

Grant of annuity for life of purchaser.

1. IN pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby grants unto the Purchaser ONE annuity or yearly rentcharge of £80 during the life of the Purchaser, to commence from the date of these presents, and to be charged upon and issuing and payable out of the lands and hereditaments comprised in the Schedule hereto, and to be paid without any deduction (except for property or income tax) by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first payment to be made on the —— day of —— next.

Covenant by vendor to pay annuity.

2. THE Vendor hereby covenants with the Purchaser that the Vendor, or the persons deriving title under him, will pay to the Purchaser, during his life, the said annuity of £—— on the days and in the manner aforesaid (o). (*Add Form No. 6, Sect. III., sup.*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Particulars of the hereditaments hereinbefore charged.

(u) This deed must be stamped with an *ad valorem* conveyance stamp on the sum paid to the vendor by the purchaser, and must be registered under the Judgments Act, 1855, s. 12.

(o) The powers of distress and entry and the demise to trustees for a term to secure the annuity, which were formerly inserted in annuity deeds, are now unnecessary, see Conv. Act, 1881, s. 44.

## No. V.

GRANT *by a REMAINDERMAN in fee of an ANNUITY charged on the LAND and to take effect AFTER the DETERMINATION of a PRIOR LIFE ESTATE and during the LIFE of the PURCHASER (p).*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: Parties.

WHEREAS under an Indenture of Settlement dated, &c., and made, &c., and under a Disentailing Assurance dated, &c., the hereditaments hereinafter described now stand limited To the Use of the said E. F. during his life, with remainder To the Use of the Vendor in fee simple : Recital of Settlement, &c., under which E. F. is tenant for life and the Vendor remainderman in fee.

AND WHEREAS the Vendor has agreed to grant to the Purchaser an annuity of £80 during the life of the Purchaser, to commence from the death of the said E. F. and to be secured in manner hereinafter appearing, at the price of £— : Agreement for sale.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby grants unto the Purchaser ONE yearly sum or rentcharge of £80, to commence from the day of the death of the said E. F., and to be paid thenceforth during the residue of the life of the Purchaser by equal half-yearly payments in every year, the first payment to be made at the expiration of six calendar months from the death of the said E. F., and the said annual sum shall be deemed to accrue from day to day and shall be charged upon and issuing out of ALL the hereditaments described in the Schedule hereto or some or one of them and out of all other (if any) the hereditaments, capital money (q) and investments which are now or may at any time hereafter become subject to the limitations or trusts of the recited Settlement. Grant of a reversionary annuity.

2. THE Vendor hereby covenants with the Purchaser to pay to him the said reversionary yearly sum of £80 in manner and Covenant to pay reversionary annuity.

(p) See notes to last Precedent.

(q) The grant of this annuity will not prevent the tenant for life from selling the land under the S. L. Acts; hence it is desirable to give notice of the grant to the S. L. Act trustees.

at the times in and at which the same is hereinbefore made payable (*r*).

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Particulars of the hereditaments hereinbefore charged.

## No. VI.

RELEASE of PART of LANDS charged with a RENTCHARGE with a view to a SALE (*s*).

Parties.

Recite that all the hereditaments subject to rentcharge remain vested in Releasee.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., (*Releasor*), of the one part, and C. D., of, &c. (*Releasee*), of the other part (*Recite Indenture under which* "the hereditaments described in the schedule hereto, with other hereditaments," are charged with a rentcharge payable to A. B., and subject to such rentcharge are vested in C. D. in fee):

AND WHEREAS all the hereditaments comprised in the recited Indenture still remain vested in the said C. D. in fee simple, and the same are free from incumbrances, except the said rentcharge, as the said C. D. hereby declares (*t*):

Agreement to release.

AND WHEREAS the said C. D., being about to sell the hereditaments described in the Schedule hereto, has requested the said A. B. to release the same from the said yearly rentcharge of £—— limited to him as aforesaid, which the said A. B. has

(*r*) In many cases a power is given to the vendor to repurchase the annuity according to a scale contained in a schedule.

Rentcharge may be released as to a part of the property.

(*s*) By the Law of Property Amendment Act (Lord St. Leonards' Act), 1859, s. 10, it is provided that the release from a rentcharge of part of the hereditaments charged therewith shall not extinguish the whole rentcharge, but shall operate only to bar the right to recover any part of the rentcharge out of the hereditaments released, without prejudice nevertheless to the rights of all persons interested in the hereditaments remaining unreleased, and not concurring in or confirming the release.

Effect of partial release of rentcharge where the land is incumbered.

(*t*) It is important to the releasor to ascertain that this is the case, because, if the other lands are vested in some person who does not concur in the release, its effect will be that a proportionate part only of the rentcharge can afterwards be recovered against the unreleased land: *Booth v. Smith* (1884), 14 Q. B. D. 318; 54 L. J. Q. B. 119; *Price v. John*, 1905, 1 Ch. 744; 74 L. J. Ch. 469; Dart, 7th ed., 955.

agreed to do, being satisfied that the other hereditaments comprised in the recited Indenture are a sufficient security for the said rent-charge :

NOW THIS INDENTURE WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the premises, the said A. B., as Mortgagee, hereby releases ALL and singular the lands and hereditaments described in the Schedule hereto from the said yearly rentcharge of £—— limited to the said A. B. by the recited Indenture as aforesaid, and from all claims and demands whatsoever in respect of the same or any part thereof (u). Release of lands in schedule from rentcharge.

2. PROVIDED ALWAYS, that the hereditaments comprised in the recited Indenture (other than the hereditaments hereby released) shall remain subject to the same yearly rentcharge, and the powers and remedies for enforcing payment thereof, as if these presents had not been executed. Proviso saving liability of other lands.

3. (*Add acknowledgment by A. B. of the right of C. D. to production of the recited deed, if required, Form No. 6, Sect. III., sup.*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Particulars of hereditaments hereby released.

## No. VII.

RELEASE of the WHOLE of LANDS charged with a RENT-CHARGE with a view to a SALE on the purchase of an ANNUITY in lieu of the RENT-CHARGE (x).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part : Parties.

WHEREAS the said C. D. is seised in fee simple in possession of the hereditaments described in the Schedule hereto subject to a yearly rentcharge of £80 payable thereout to the said A. B. Recital of seisin subject to rentcharge.

(u) Before the land is sold it may, where the whole of the land is released, be necessary to commute any duty which has attached and will become payable on the cesser of the rentcharge. Duty on cesser of rentcharge.

(x) See notes to last Precedent.

during the life of the said A. B. charged by an Indenture dated, &c., and made, &c., but otherwise free from incumbrances :

Of purchase of annuity and agreement to release rent-charge to facilitate sales.

AND WHEREAS negotiations are in progress for a sale of the said hereditaments, and in order to facilitate such sale and to secure to the said A. B., the payment of the said yearly sum of £80 the said C. D. has purchased in the name and for the benefit of the said A. B. an annuity of £80 from the — Insurance Company during the remainder of the life of the said A. B. payable on the half-yearly days and in like manner as the said yearly rent-charge is now payable under the provisions of the recited Indenture, and in consideration thereof the said A. B. has agreed to execute such release as is hereinafter contained :

Release of rentcharge.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the annuity so purchased as aforesaid, the said A. B., As Mortgagee, hereby releases unto the said C. D.

ALL THAT the said yearly rentcharge of £80 charged by the recited Indenture upon the hereditaments described in the Schedule hereto,

To THE INTENT that the said rentcharge shall forthwith merge and be absolutely extinguished in the freehold and inheritance of the hereditaments and property affected thereby.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Particulars of hereditaments affected by the said yearly rent-charge of £80 and hereby released.

No. VIII.

CONVEYANCE of a HOUSE and PARK by an OWNER IN FEE SIMPLE to a PURCHASER, it being part of the ARRANGEMENT that the VENDOR shall have a LEASE of the property for a TERM DETERMINABLE with his LIFE at a NOMINAL RENT (y).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

How arrangement for reserving life

(y) The intention of the parties is that the vendor shall, practically, reserve a life interest, and that the purchaser shall have a reversionary

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, and has agreed to sell the same to the Purchaser in consideration first, of the sum of £——, and, secondly, of a Lease (z), already prepared and intended to bear even date with but to be executed after these presents, and to be made between the Purchaser of the one part and the Vendor of the other part, being a Lease of the same hereditaments to the Vendor for the term of ninety-nine years, if he shall so long live, at the yearly rent of £—— :

Seisin of Vendor and agreement for sale in consideration of a sum of money and of a Lease to be granted by Purchaser.

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (*the receipt, &c.*), and of the Lease to be granted by the Purchaser to the Vendor as aforesaid, the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

Conveyance.

ALL THOSE, &c. (*Forms, Sect. II., sup.*),

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple.

Habendum.

2. THE Purchaser hereby covenants with the Vendor that the Purchaser will forthwith by the recited Indenture of even date herewith demise the hereditaments hereby conveyed to the Purchaser for the term, at the rent, and subject to the covenants and conditions therein contained.

Covenant by Purchaser to grant a lease.

3. (*Add acknowledgment, &c., as to documents, if required, Form No. 6, Sect. III., sup. Also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

estate only. But if the conveyance is made to the use of the vendor for life, with remainder to the use of the purchaser in fee simple, there would be a settlement within the meaning of the S. L. Act, 1882, and the vendor as tenant for life would be able to sell the fee simple without the concurrence of the purchaser as remainderman. This consequence can be avoided by adopting the plan in the above Precedent, viz., of conveying the property to the purchaser in fee simple, he, by a deed of even date, demising it to the vendor for a term determinable with his life at a small rent, see S. L. Act, 1882, s. 58 (1) (iv.). On completion the lease will be exchanged for the conveyance.

interest to vendor should be carried out.

(z) See next Precedent for a form of lease.

## No. IX.

LEASE *of a House and Park from PURCHASER to VENDOR*  
*pursuant to a COVENANT.*

Parties.

THIS INDENTURE, made, &c., BETWEEN C. D., of, &c. (hereinafter called the Lessor, which expression, where the context so admits, includes his heirs and assigns), of the one part, and A. B., of, &c. (hereinafter called the Tenant, which expression, where the context so admits, includes his executors, administrators and assigns), of the other part,

WITNESSETH as follows:—

Demise by  
Purchaser to  
Vendor for  
term if Vendor  
shall so long  
live.

1. In pursuance of a covenant contained in an Indenture of Conveyance bearing even date with but executed before these presents, and made between the Tenant of the one part and the Lessor of the other part (being a conveyance of the hereditaments hereinafter described to the Lessor), and in consideration of the rent and the Tenant's covenants hereinafter contained, the Lessor hereby demises unto the Tenant

Parcels.

ALL, &c. (*see Forms in Sect. II., sup.*),

Habendum.

To HOLD unto the Tenant from the date of these presents for the term of ninety-nine years, if the Tenant shall so long live, YIELDING AND PAYING therefor the yearly rent of £1 on the — day of — in every year.

Tenant's  
Covenants.

2. THE Tenant, for himself and his assigns, hereby covenants with the Lessor in manner following (that is to say) (a):—

(1) That the Tenant will, at his own expense, during the term hereby granted keep in good and complete repair and condition the capital messuage called —, and all other the buildings and erections for the time being upon the premises hereby demised, and also all the gates, stiles, and fences upon the premises.

(2) That the Tenant will, at the like expense, during the term hereby granted adequately insure and keep insured the said capital messuage, and all other the buildings and erections for the time being standing upon the said

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(a) If so arranged insert here a covenant to pay rates and taxes and a proviso for re-entry at the end of the Precedent. See Precedents of Leases in Vol. II. There must be a small rent, see S. L. Act, 1882, s. 58 (i.) (iv.), otherwise the lessee will have the powers of a tenant for life.

premises, against loss or damage by fire, in some office or offices to be approved by the Lessor, and also will, when required, produce to the Lessor or his agent the policies of such insurance, and the receipts for the current year's premiums paid thereon: AND ALSO will forthwith, on every occasion on which money shall be received by virtue of any such insurance, lay out and expend the same (after deducting necessary expenses) in properly repairing, rebuilding, or reinstating the buildings which shall have been destroyed or damaged.

- (3) That the Tenant will not during the term hereby granted fell or cut down any timber or timber-like trees standing or growing on the premises hereby demised, unless the same may be required for renewing or repairing the park palings, and then only such as may be properly and fairly felled or cut down without detracting from the enjoyment of the said mansion house as a place of residence, or from the beauty of the premises hereby demised, or unless such timber or trees shall be of such age and in such state as that the same considered as ornamental timber only may properly require to be felled or cut down with a view to the enjoyment of the said mansion house as a place of residence or to the beauty of the premises.

3. PROVIDED ALWAYS, that the Tenant shall give to the Lessor at least one calendar month's previous notice in writing of the intention of the Tenant to cut any timber or timber-like trees under the provisions hereinbefore contained, and that the trees intended to be cut or felled shall be marked, and shall be shown when required to some person appointed for the purpose by the Lessor; and in case such person shall, on behalf of the Lessor, object to the felling or cutting of any trees, as being improper and coming within the restrictions aforesaid, the same shall not be felled or cut unless and until it shall have been decided by arbitration, as hereinafter provided, that the same may be felled or cut.

Vendor to give notice before cutting timber.

4. PROVIDED ALSO, that if any question or difference shall arise between the Lessor and Tenant as to whether any timber or timber-like trees are such as may be properly felled or cut down having regard to the covenant and restrictions aforesaid,

Arbitration clause.

such question or difference shall be referred to a single arbitrator [or to two arbitrators, one to be appointed by each party], subject to the provisions of the Arbitration Act, 1889.

IN WITNESS, &c.

GROUP F.—CONVEYANCES ON SALES OF OR RESERVING MINES AND MINERALS (b).

No. I.

CONVEYANCE of MINES and MINERALS without SURFACE RIGHTS. VARIATIONS where powers to LET DOWN or ENTER upon the SURFACE subject to making COMPENSATION for damage are conferred (c).

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Seisin of Vendor. WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described (including the mines and minerals in and under the same), and has agreed to sell the said mines and minerals to the Purchaser [together with the rights over the surface hereinafter mentioned] at the price of £ — :

NOW THIS INDENTURE WITNESSETH as follows :—

Conveyance of mines and minerals. 1. IN pursuance of the said agreement, and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

Parcels of minerals. ALL AND SINGULAR the mines, minerals, and mineral substances [or, specifying them as the mines, veins, seams and beds of coal, ironstone, iron ore and fire-clay, &c.] in or under the hereditaments situated in the Parish of —, in the County of —, and more particularly described in the first Schedule hereto and delineated on the plan drawn on these presents and thereon coloured pink :

Increment value duty on minerals. (b) As to increment value duty on minerals, see Preliminary Chapter. Where exemption from the duty is claimed on the grounds that the minerals were leased or worked before the 30th April, 1909, it may be found desirable to insert a recital to that effect in the conveyance.

(c) See note to Form No. 2, Sect. II., *sup.*, and Dissertation, pp. 123-6, *sup.*

[TOGETHER with full power (*d*) for the Purchaser and the persons deriving title under him, without leaving any subjacent or lateral support, to let down the surface of the said hereditaments and any adjoining lands or minerals of the Vendor and any buildings erected or to be erected thereon in working such mines, minerals, and mineral substances, but doing as little damage as may be, and so that proper compensation shall be paid to the Vendor or other the owner for the time being of the surface or any adjoining minerals or land in respect of any damage to any buildings now or hereafter to be erected thereon or to the surface or any adjoining minerals by reason of the working of such mines, minerals, and mineral substances, the amount of such compensation in case of dispute to be settled by the arbitration of two arbitrators or their umpire, pursuant to the provisions of the Arbitration Act, 1889, or any statutory modification thereof:]

[Variation A.  
Power to Purchaser to let down the surface, without power of entry thereon.]

[TOGETHER with full power (*continue as in Form No. 2, Sect. II., sup., substituting "the Purchaser" for "the Vendor").*]

[Variation B.  
Power to let down surface and to enter thereon and to sink shafts, &c.]  
Underground workings only permitted.

To HOLD unto and To THE USE of the Purchaser in fee simple.

2. THE said mines and minerals shall and may be worked, gotten, and carried away by means of outstroke or underground workings only through any mines or lands belonging to or held by the Purchaser or the persons deriving title under him and adjoining the mines and minerals hereby conveyed, or which he or they may for the time being be authorised to use for that purpose, but the surface of the lands mentioned in the Schedule hereto, or any of them, shall not be entered upon or in any manner interfered with for any of the purposes aforesaid, or for any purpose connected with the mines and minerals hereby conveyed, and the Purchaser and the persons deriving title under him shall (except as aforesaid) do no damage or injury to the surface of the said lands in or about the working and getting of the said mines and minerals, or in any wise relating thereto (*e*).

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(*d*) It is generally more desirable to give the purchaser power to let down the surface subject to his paying compensation for damage than to oblige him to leave supports which are often found unsatisfactory. It is safer to let the whole district sink. Boundary barriers are, however, frequently required.

(*e*) This provision will not be required if Variation B is used.

3. THE Vendor hereby acknowledges (*Form No. 6, Sect. III., sup. as to documents in second schedule, Also Form No. 11, Sect. III., if required*).

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

Particulars of the hereditaments above referred to.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Particulars of documents retained in the custody of the Vendor.

## No. II.

CONVEYANCE of FREEHOLDS where the MINES and MINERALS and POWERS of WORKING are reserved (*f*). A short form.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part:

Seisin of Vendor and agreement for sale subject to reservations of mines and minerals.

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, and has agreed to sell the same to the Purchaser, with the reservation of the mines and minerals thereunder, and of the powers of working hereinafter contained, at the price of £—:

NOW THIS INDENTURE WITNESSETH as follows:—

Conveyance.

1. In pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Vendor (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

Parcels.  
Habendum.

ALL THOSE, &c. (*Form No. 2, Sect. II., sup.*),

To HOLD (except and reserved as aforesaid) unto the Purchaser in fee simple To THE USE that the Vendor his heirs and assigns shall have and may exercise the powers of working minerals hereinbefore expressed to be reserved And subject as aforesaid To THE USE of the Purchaser in fee simple.

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(*f*) See Conv. Act, 1881, s. 62, as to the reservation of the powers. The deed should be executed in duplicate. For a longer form, see next Precedent.

2. THE Vendor hereby acknowledges (*Form No. 6, Sect. III.*).  
(*Add Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

### No. III.

CONVEYANCE of FREEHOLDS where the MINES and MINERALS  
and POWERS of WORKING are reserved (*h*). *Another form.*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, and has agreed to sell the same to the Purchaser, subject to the exceptions and reservations hereinafter contained, at the price of £—— :

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

ALL, &c. (*parcels*), Except and Reserved as hereinafter mentioned,

To HOLD (except as hereinafter mentioned) unto the Purchaser in fee simple, To THE USE that the Vendor his heirs and assigns shall have and may exercise the powers, rights and privileges hereinafter expressed to be reserved And subject thereto To THE USE of the Purchaser in fee simple.

2. THERE shall be excepted and reserved unto the Vendor (*i*) in fee simple, out of the conveyance hereby made, all mines, veins, seams, and beds of coal, ironstone, and other minerals whatsoever already found, or which may hereafter be found under the lands hereby conveyed, with liberty to work the same

(*h*) See note to last Precedent.

(*i*) Unless the new powers are created by way of use the reservation takes effect as a re-grant and the conveyance would have to be executed in duplicate by the purchaser, see *Wickham v. Hawker* (1840), 7 M. & W. 63 ; 10 L. J. Ex. 153 ; *May v. Belleville*, 1905, 2 Ch. 605 ; 74 L. J. Ch. 678.

Liberty of  
ingress, &c.

Liberty to sink  
pits.

Liberty to  
appropriate  
surface for  
heap room.

Vendor to pay  
rent for sur-  
face appro-  
priated.

Workings  
to be con-  
ducted so as  
not to en-  
danger build-  
ings, &c.

either by instroke or outstroke, with or without leaving any sub-  
jacent or lateral support for the surface or any adjacent minerals,  
but subject to the provisions as to compensation hereinafter con-  
tained, and with full liberty of ingress, egress, and regress at all  
times for the Vendor, his heirs or assigns, and his or their servants,  
agents and workmen, into and upon the said lands, and either with  
or without horses and other cattle, carts, waggons, engines, and  
other vehicles for the purpose of searching for, working, getting,  
and carrying away the said mines and minerals, and with full  
liberty also for the Vendor, his heirs or assigns, to sink, drive, make,  
and use pits, shafts, drifts, adits, aircourses, and watercourses,  
and to erect and set up fire and other engines, machinery, and  
works, and to lay down railroads and other roads in, upon, under,  
and over the said lands, or any of them, for the purpose of more  
conveniently working and carrying away the said mines and  
minerals, and also to appropriate and use any part of the surface  
of the said lands for depositing, placing, and heaping thereon the  
minerals, waste, rubbish, and other substances which may be  
gotten from the said mines, and generally to do all other acts  
and things necessary or proper for working and getting the said  
mines and minerals according to the most approved practice of  
mining in the district.

3. THE Vendor and the persons deriving title under him shall  
pay to the Purchaser and the persons deriving title under him  
the annual sum of £— for every acre, and so in proportion  
for any less quantity than an acre of land, the surface whereof  
shall be appropriated or used for any of the purposes aforesaid,  
so long as such appropriation or use shall continue, and until  
the surface shall be restored, as nearly as may be practicable, to  
its original state and condition before such appropriation or use  
commenced.

4. THE workings of the said mines shall be conducted, so far  
as practicable, in such a manner as not to endanger more than  
necessary any buildings now being on the said lands, or which  
may be hereafter erected on the site of or within — yards of  
the site of any present buildings, and generally so as to do as  
little damage or injury to the surface of the said lands as shall  
be consistent with the proper working of the said mines, and  
such compensation shall be paid in respect of any such damage  
or injury as hereinafter provided.

5. THE Vendor and the persons deriving title under him shall pay to the Purchaser and the persons deriving title under him adequate compensation, for all damage or injury which he or they, or his or their tenants, may sustain by reason of the working of the said mines, or the exercise of any of the liberties or privileges hereby excepted and reserved (including any damage or injury occasioned to the surface of the said lands and to any buildings now or hereafter to be erected thereon as aforesaid), the amount of such compensation, and all other matters in difference which may arise between the parties in connexion with the said excepted mines, minerals, liberties and privileges, to be settled by a single arbitrator [or two arbitrators, one to be appointed by each party or their umpire] under and subject to the provisions of the Arbitration Act, 1889, or any statutory modification thereof.

Vendor to pay compensation for damage.

6. THE Vendor hereby acknowledges (*Form No. 6, Sect. III., sup., also No. 11, if required*).

IN WITNESS, &c. (*k*).

## GROUP G.—CONVEYANCES ON SALES OF ADVOWSONS AND ECCLESIASTICAL PROPERTY.

### No. I.

#### CONVEYANCE of an Advowson (*l*).

THIS INDENTURE, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Parties.

(*k*) As to sales of mines and minerals with or without the surface, or of land with a reservation of minerals by a tenant for life, see S. L. Act, 1882, s. 17, also ss. 2 (10) (iv.) and 4 (6). The ordinary Precedent I., Group E, under S. L. Acts, *sup.*, of a conveyance of freeholds can be readily adapted, but it must be seen that the rights of working are reserved to the uses of the settlement.

Separate dealings with surface and minerals by tenant for life.

(*l*) The conveyance must be registered within one month in the registry of the diocese: Benefices Act, 1898, s. 1 (1) (a); see also note to Prec. XIII. of Agreements for Sale, p. 260, *sup.*

The owner of an advowson (including the purchaser of an estate for life in an advowson), being a clerk, may, on a vacancy, offer himself to the bishop, and the bishop cannot refuse him on that ground: *Walsh v. Bishop of Lincoln*

Purchaser of advowson may present himself

Seisin of Vendor and agreement for sale.

WHEREAS the Vendor is seised in fee simple of the advowson hereinafter described, and has agreed to sell the same free from incumbrances to the Purchaser at the price of £—— :

Conveyance.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

(1875), L. R. 10 C. P. 518; 44 L. J. C. P. 244; see also *Lowe v. Bishop of Chester* (1883), 10 Q. B. D. 407.

Vacancy.

If the owner in fee of an advowson dies during a vacancy, the next presentation goes to his personal representatives: *Mirehouse v. Rennell* (1832), 8 Bing. 490.

Bankrupt.

Where the owner of an advowson is a bankrupt, the right of nomination may be exercised by him in respect of any vacancy occurring before the sale of the advowson, see Bankr. Act, 1883, s. 44 (ii.). A husband during coverture has the right of nomination in respect of an advowson vested in his wife, and not being her separate property under the M. W. P. Acts, or otherwise, and after her death, in case there were issue of the marriage, and the husband survives, he will be entitled to present as tenant by the curtesy, see 3 Cru. Dig. 14; Tud. R. P. 214. If a widow is entitled to dower in respect of an advowson, the heir has the first two presentations and the widow the third.

Joint tenants and tenants in common.

If a right of presentation is vested in joint tenants or tenants in common they must concur in the presentation, in order to make it binding on the ordinary. If they present severally, the ordinary may admit either of the presentees or refuse all, and if no joint presentation is made within the six months he can present by lapse: Co. Lit. 186 b.

Coparceners.

In the case of coparceners the eldest may present on the first turn, and this right passes to her issue or to her assign: Co. Lit. 186 a.

Tenants in common when they cannot agree.

Where an advowson is vested in trustees in trust for tenants in common and the beneficiaries cannot agree as to the nomination, the Court will direct them to draw lots: *Johnstone v. Baber* (1856), 6 De G. M. & G. 439; 25 L. J. Ch. 899. And it is conceived that the same course would be adopted in the case of joint tenants. In the case of coparceners, equity would follow the law and allow the eldest to nominate on the first turn.

Infant.

An infant, and not his guardian, is entitled to present to a church: *Hearle v. Greenbank* (1749), 3 Atk. at p. 710.

Trustees.

If the right of nomination is vested in trustees, they cannot vote by proxy; and unless they have been incorporated by charter, they must all join in the presentation, if there is no clause authorising a majority to bind the rest.

Parishioners, &c.

Where an advowson is vested in the parishioners or inhabitants of a place or in trustees for them, the majority of the parishioners or inhabitants may appoint: *Fearon v. Webb* (1807), 14 Ves. 13.

Resignation of benefices.

As to engagements to resign benefices in favour of other persons, see the Clergy Resignation Bonds Act, 1828, also Benefices Act, 1898. A precedent of a bond of resignation is given in Vol. II. under "Bonds."

ALL THAT the advowson and perpetual right of presentation of Parcels.  
and to the Rectory or Parish Church of —, in the County of  
—,

To HOLD unto and To THE USE of the Purchaser in fee simple. Habendum.  
(Add acknowledgment, &c., as to documents, if required, Form  
No. 6, Sect. III. Also Form No. 11, Sect. III., if required.)

IN WITNESS, &c.

## No. II.

### CONVEYANCE by an INCUMBENT of GLEBE LAND under the GLEBE LANDS ACT, 1888 (m).

THIS INDENTURE, made, &c., BETWEEN The Revd. A. B., Parties.  
Vicar of the Vicarage and Parish Church of —, in the Parish  
of —, in the County of —, Clerk in Holy Orders (herein-  
after called the Vendor), of the one part, and C. D., of, &c.  
(hereinafter called the Purchaser), of the other part :

WHEREAS the Vendor, as the present incumbent of the said Seisin of  
Vendor.  
Church and Vicarage, is entitled to the fee simple (n) in posses-  
sion free from incumbrances of the hereditaments hereinafter  
described, forming part of the glebe land of the said Vicarage :

---

(m) See notes to Form No. 19, Special Conditions, p. 151, *sup.*, as to notices  
required and other matters. If no objection is made, the Board of Agriculture Glebe Lands  
Act, 1888.  
and Fisheries requires a valuation by a competent surveyor. The Board  
may then approve of the sale by an order made in the prescribed form, see  
1909, W. N. pt. ii., 319. The money has to be paid into the Bank of  
England to the account of the Board, and the application of the proceeds  
is directed by s. 4 of the Act.

A limitation to X. and his successors, vicars of a parish, is not a settle- S. L. Acts do  
not apply to  
ecclesiastical  
property.  
ment within the S. L. Acts: *Ex p. Vicar of Castle Bytham*, 1895, 1 Ch. 348;  
64 L. J. Ch. 116; the Acts do not apply to ecclesiastical property at all:  
S. C., and *Re Bishop of Bath and Wells*, 1899, 2 Ch. 138; 68 L. J. Ch. 524.  
The Court can, however, apply, under S. L. Act, 1882, s. 32, the proceeds of  
sale of such property sold under the L. C. C. Act, 1845: *Wolst. Conv. Acts*,  
9th ed., 389 and cases there cited.

(n) As to the legal position of an ecclesiastical corporation sole, see (1900)  
16 L. Q. R. 335.

Inquiries or searches may be made of or at Queen Anne's Bounty, the Searches and  
inquiries.  
Ecclesiastical Commissioners, the Laud Improvement Company, and the  
Diocesan Registry for incumbrances or other dealings.

Conditional  
agreement  
for sale.

AND WHEREAS the Vendor, as such incumbent as aforesaid, has lately agreed to sell to the Purchaser the hereditaments herein-after described and the fee simple thereof in possession free from incumbrances at the price of £——, but subject to the approval of the Board of Agriculture and Fisheries (hereinafter called the Board) :

Approval by  
Board of  
Agriculture,  
&c.

AND WHEREAS by an instrument dated the —— day of —— under their official seal the Board has approved (o) of the said sale (*Insert here such conditions (if any) as are prescribed by the order*) :

Conveyance.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— paid by the Purchaser into the Bank of England to the account of the Board (the receipt whereof is acknowledged by a memorandum in writing under the official seal of the Board dated the —— day of ——, 19—), the Vendor, As Trustee (p), and as such Vicar as aforesaid, and in exercise of the power for this purpose conferred on him by the Glebe Lands Act, 1888, and of all other powers (if any), hereby conveys unto the Purchaser

Parcels.

ALL, &c. (*see Forms in Sect. II., sup.*),

Habendum.

To HOLD unto and To THE USE of the Purchaser in fee simple. (*Add Form No. 11, Sect. III., if required.*)

IN WITNESS, &c.

Exceptions  
from Glebe  
Lands Act,  
1888.

(o) The Board cannot approve the sale of any land occupied by the parsonage house, or the outbuildings, garden, or other appurtenances thereof, or such part of the glebe as they consider necessary for the convenient enjoyment of the house: s. 3 (1) ; nor of (a) any land subject to a lease originally created for a term exceeding twenty-one years; (b) any land let for any term at a rent less than two-thirds of the rack-rent, or where for any other reason the incumbent is not in possession of the full rents and profits; and (c) any mines and minerals where they are or are likely to become of considerable value: s. 5 (2).

Covenants for  
title by an  
incumbent.

(p) Having regard to the peculiar estate of the incumbent, it would seem that he should only give the implied covenant against incumbrances, or an express covenant as regards his own acts, thus:—

“And the Vendor hereby covenants with the Purchaser that the Vendor has not done or knowingly suffered or been party or privy to any act or thing whereby he is prevented from conveying the said hereditaments in manner aforesaid.”

## No. III.

CONVEYANCE *by an INCUMBENT of GLEBE LANDS under the ECCLESIASTICAL LEASING ACTS (q).*

THIS INDENTURE, made, &c., BETWEEN The Revd. A. B., Parties  
 Rector of the Rectory and Parish Church of —, in the  
 Parish of —, in the County of —, Clerk in Holy Orders,  
 (hereinafter called the Vendor), of the 1st part, C. D., of, &c.,  
 E. F., of, &c., and G. H., of, &c. (the present patrons of the  
 said Rectory, and hereinafter called the Patrons), of the 2nd  
 part, the Ecclesiastical Commissioners for England (hereinafter  
 called the Commissioners), of the 3rd part, and K. L., of, &c.  
 (hereinafter called the Purchaser), of the 4th part :

WHEREAS (*Recite seisin of Vendor as in last Precedent, substi-* Seisin.  
*tuting "Rectory" for "Vicarage," if required*) :

AND WHEREAS it has been made to appear to the satisfaction of the Commissioners that the hereditaments hereinafter described may to the permanent advantage of the estate and endowments belonging to the said Rectory be sold (*r*) in manner hereinafter appearing :

AND WHEREAS the Vendor, as such Rector as aforesaid, has with the consent of the Patrons and the approval of the Commissioners agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £—— :

AND WHEREAS due notice of the intended sale was given to the Right Revd. —, Lord Bishop of —, on the — day of — :

---

(q) See notes to Special Conditions, Form No. 20, p. 152, *sup.*, as to the notices required, the necessary parties, &c. As regards the title of the patrons, in this case it is generally considered sufficient to search at the Diocesan Registry, but a purchaser might perhaps, apart from special condition, require a title to be shown to the advowson.

As to searches and inquiries, see note to last Precedent ; if the property could have been dealt with under the Glebe Lands Act, 1888, then inquiries should also be made of the Board of Agriculture and Fisheries.

(r) As to these words see Ecc. Leasing Act, 1858, s. 1. If the case comes within the Glebe Lands Act, 1888, see note to last Precedent ; it is more convenient to proceed under that Act.

As to sales of the parsonage house, see the next Precedent.

NOW THIS INDENTURE WITNESSETH as follows :—

Conveyance by  
incumbent.

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Commissioners (the payment of which sum the Commissioners hereby acknowledge, and the receipt of which sum is intended to be acknowledged by a memorandum indorsed on these presents under the hand of their Treasurer (s)), the Vendor, As Trustee (t), and as such incumbent as aforesaid, and with the consent of the Patrons (testified by their execution hereof) and with the approval of the Commissioners (testified by their execution hereof) and in exercise of the power for this purpose conferred on him by the Ecclesiastical Leasing Acts (u), hereby conveys unto the Purchaser,

Parcels.

ALL THAT, &c. (*see Forms in Sect. II., sup.*),

Habendum.

TO HOLD unto and TO THE USE of the Purchaser in fee simple.

Acknowledg-  
ment for  
production.

2 AND 3. (*Add, if required, acknowledgments for production by Vendor and Patrons of documents (if any) showing they are the present incumbent and patrons. Also Form No. 11, Sect. III., if required.*)

IN WITNESS, &c. (x).

#### No. IV.

CONVEYANCE of a VICARAGE under the PARSONAGE ACTS,  
1838 (y).

Parties.

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN the Revd. ——, Incumbent of the Vicarage and Benefice of ——, in the County of ——, in the Diocese of ——, and in the Province of Canterbury [*or York*], Clerk in Holy Orders (hereinafter called the Incumbent), of the 1st part, ——, of, &c., the

(s) The purchase-money must be paid to the Commissioners, and the receipt of their treasurer is a good discharge to the purchaser: Ecc. Leasing Act, 1858, s. 2.

(t) As to covenants for title, see notes to last Precedent.

(u) This is the short title of the Acts of 1842 and 1858, see s. 13 of the latter Act. The Act of 1865 deals only with money arising from rent-charges.

(x) Under s. 7 of the Act of 1842 the execution by the necessary parties is conclusive evidence that the Acts have been complied with.

(y) There are two statutes of the same year.

Patron of the said Benefice (hereinafter called the Patron), of the 2nd part, The Right Revd. Father in God —, by Divine Permission Lord Bishop of —, Ordinary of the said Benefice (hereinafter called the Ordinary), of the 3rd part, The Right Honourable and Most Revd. Father in God, —, by Divine Providence Lord Archbishop of Canterbury, Primate of All England [*or York*], and Metropolitan, within whose Province the said Benefice is situated (hereinafter called the Metropolitan), of the 4th part, and —, of, &c. (hereinafter called the Purchaser), of the 5th part :

WHEREAS the Incumbent is seised in right of the said Benefice of — to him and his successors of the vicarage house and other hereditaments hereinafter described :

Recital of  
seisin of  
Incumbent.

AND WHEREAS in pursuance of the Parsonage Act, 1838, and Parsonage Amendment Act, 1838, the Incumbent, with the consent of the Patron and of the Ordinary and of the Metropolitan, has agreed in his corporate capacity to sell to the Purchaser in fee simple in possession the vicarage house and other hereditaments hereinafter described free from incumbrances at the price of £—, which price appears to the parties hereto of the 2nd, 3rd, and 4th parts to be fair and reasonable :

Agreement  
for sale.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £— on or before the execution of these presents paid by the Purchaser with the privity of the parties hereto of the first four parts to the Governors of the Bounty of Queen Anne (z) (the receipt of which sum of £— is acknowledged by the receipt of the Treasurer of the said Governors indorsed hereon), the Incumbent, in exercise of the powers conferred on him by the Parsonage Acts, 1838, and of every other power enabling him, and with the consent and approbation of the Patron, the Ordinary, and Metropolitan respectively (testified by their execution hereof), hereby, As Trustee, conveys unto the Purchaser

Conveyance  
under Par-  
sonage Acts.

ALL THAT the vicarage house of —, situated, &c., with the outbuildings, garden and grounds used therewith, and containing in the whole —a. —r. —p. or thereabouts, all of which hereditaments belong to the said Benefice and are delineated on the plan drawn on these presents and thereon coloured —,

Parcels.

(z) See Parsonage Act, 1838, s. 8.

Habendum.

To HOLD unto and To THE USE of the Purchaser in fee simple [subject to the vicarial tithe rentcharge of £—— per annum charged thereon]. (*Add Form No. 11, Sect. III., sup., if required.*)

IN WITNESS, &c.

## MEMORANDUM.

Receipt to be indorsed.

As Treasurer for the time being of the Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, I acknowledge to have received from the within-named —— (*Purchaser*) the sum of £——, being the consideration money in the within-written Indenture expressed to be paid by him.

Dated ——.

## GROUP H.—CONVEYANCES ON SALES OF LIFE ESTATES OR INTERESTS, REMAINDERS, REVERSIONS, AND LIFE POLICIES.

## No. I.

CONVEYANCE *of a legal life estate in FREEHOLDS, and of equitable life interests in COPYHOLDS, LEASEHOLDS, and CAPITAL MONEY.*

Parties.

THIS INDENTURE, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Recital of Will under which Vendor is tenant for life.

WHEREAS (*a*) under the Will dated, &c., of X. Y., who died on the, &c., and proved on the, &c., by R. and S., the executors therein named, and by virtue of an Assent in writing dated, &c., under the hands of the said R. and S., and by virtue of divers dispositions to the uses or upon the trusts of the said Will the freehold hereditaments hereinafter described (with certain advowsons (*b*)) nowstand limited To the Use of the Vendor during his life without impeachment for waste, with divers remainders over, and the copyhold and leasehold hereditaments hereinafter

(*a*) If the life estate is taken under a realty settlement this recital can be readily adapted and “the recited settlement” can be referred to in place of the Will.

(*b*) If advowsons are included in the conveyance, then it must be registered under the Benefices Act, 1898, pass the whole of the vendor’s interest, and otherwise comply with that Act.

described are now vested in the said R. and S. for customary estates in fee simple or for the residues of the terms created by the respective Leases hereinafter mentioned, Upon trust for the Vendor during his life without impeachment for waste, with divers remainders over (c), And the said R. and S. are the present trustees of the said Will for the purposes of the Settled Land Acts, 1882 to 1890 :

AND WHEREAS divers sales and other dispositions have been effected under the Settled Land Acts, 1882 to 1890, of other hereditaments formerly subject to the limitations of the recited Will, and the net capital money arising from such sales and dispositions [with the residuary personal estate of the said testator] is now represented by the investments and cash mentioned in the fourth Schedule hereto and standing in the names of the said R. and S. as such trustees aforesaid:

Of sales under  
S. L. Acts.

AND WHEREAS the Vendor (d) has agreed to sell his life estate in possession in the hereditaments [capital money and investments] for the time being subject to the limitations and trusts of the said Will (other than advowsons) to the Purchaser free from incumbrances at the price of £—— :

Agreement  
for sale.

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser (e)

Conveyance of  
life estate in  
freeholds,  
copyholds,  
leaseholds,  
and capital  
money.

(c) If the Will gives personal estate to be held as capital money add here :

“And the said testator bequeathed the residue of his personal estate after payment thereof of his funeral and testamentary expenses, debts and legacies (all of which have been discharged) to the said R. and S., to be held Upon trust as if the same were capital money arising under the Settled Land Acts, 1882 to 1890, and so as to be primarily liable to be laid out in the purchase of freehold land to be conveyed to the uses thereby declared concerning the freehold hereditaments thereby settled.”

Variation if  
personal estate  
given to  
devolve with  
the land.

(d) The purchaser should obtain the certificate of birth of the vendor and make the usual inquiry of the trustees as to notices of incumbrances and dealings.

If the purchaser intends to insure the vendor's life it is desirable to arrange for the vendor to take out the policy and assign it.

(e) Notice in writing should be given to the S. L. Act trustees in respect of the equitable life interests conveyed. Even if a legal life estate only is

Manors, &c. FIRST, ALL THOSE manors, &c. (*see Form No. 9, Sect. II., sup.*);  
 Mansion Secondly, ALL THAT capital messuage (*see Form No. 9, Sect. II.*);  
 house. THIRDLY, ALL THOSE perpetual yearly rentcharges, tithes,  
 Rentcharges. tithe rentcharges, and other incorporeal hereditaments (except  
 advowsons or rights of presentation) now subject to the limita-  
 tions of the recited Will;

Freeholds in first Schedule. FOURTHLY, ALL THOSE freehold or customary freehold mes-  
 suages, farms, &c. (*continue Form No. 9, Sect. II., referring to  
 first Schedule*), and all other (if any) the freehold lands now subject  
 to the limitations of the said Will;

Copyholds in second Schedule. FIFTHLY, ALL THOSE copyhold or customary messuages, farms,  
 &c. (*continue as last above, referring to second Schedule*), and all other  
 (if any) the copyhold or customary lands and hereditaments now  
 subject to the trusts of the said Will;

Leases in third Schedule. SIXTHLY, ALL the premises respectively comprised in and  
 demised by the respective Leases mentioned in the third Schedule  
 hereto;

Capital money and invest- Capital money mentioned in the fourth Schedule hereto and all  
 ments in fourth Schedule. other (if any) the personal estate now by any means liable to be  
 laid out in the purchase of land to be conveyed to the uses by  
 the said Will declared concerning the freehold hereditaments  
 thereby settled,

To HOLD unto the Purchaser for the residue of the life of the  
 Vendor without impeachment for waste.

Provision as to the exercise of the S. L. Act powers, &c., without the consent of the Purchaser of the life estate. 2. PROVIDED ALWAYS (*f*), that the conveyance hereinbefore  
 contained of the said life estate or interest is subject and without  
 prejudice to all powers capable of being exercised by the Vendor  
 as tenant for life under the recited Will, and whether under the  
 Settled Land Acts, 1882 to 1890, or any Acts amending or  
 extending the same, or under the said Will or otherwise however,  
 and so that the exercise of any or every such power shall take

---

conveyed, it is desirable to give notice, so that there may be no mistake as  
 to the payment of the income of capital money arising on sales of the land.

Sometimes it is desirable to indorse notice of the conveyance on one of  
 the title deeds.

(*f*) Unless this proviso is added the purchaser's consent is requisite on  
 all dealings: S. L. Act, 1882, s. 50 (3); except that if the tenant for life  
 remains in possession a lease granted without taking a fine would be good:  
 Wolst. Conv. Acts, 9th ed., 408.

effect in like manner as if the interest of the Purchaser hereby acquired had been limited by the said Will, And no further consent shall be required by the Purchaser or the persons deriving title under him for the purposes of section fifty of the said Act of 1882, nor shall it be necessary to give a person acquiring any interest under the said powers for money or money's worth any notice of these presents, but the interest of the Purchaser hereby acquired shall be transferred to the capital money investment or the income thereof arising under the said powers.

3. (*Add acknowledgment, &c., of documents in fifth Schedule (g) ; see Form No. 6, Sect. III., sup.*)

Acknowledgment, &c., of documents.

IN WITNESS, &c.

(*Add the five Schedules.*)

## No. II.

### ASSIGNMENT of *Life Interest in PERSONALTY and in LAND held on trust for sale.*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Parties.

WHEREAS (*h*) by an Indenture (hereinafter called the Conveyance), dated, &c., and made between the Vendor of the 1st part, M. C., spinster (now and hereinafter called M. B.), of the 2nd part, and X. and Y. (hereinafter called the Trustees), of the 3rd part (*continue Form No. 15, Sect. I., sup., substituting "the Trustees" for "the Vendors," and ending*) Upon the trusts declared concerning the same by an Indenture bearing even date therewith, meaning the Settlement next hereinafter recited :

Recital of Conveyance on trust for sale.

AND WHEREAS by an Indenture (hereinafter called the Settlement) bearing even date with and made between the same persons as the parties to the Conveyance and in the same order (being a

Settlement of personality including net proceeds of sale.

(*g*) Though this acknowledgment is unusual (see Dart, 7th ed., 485), it may be desirable as a tenant for life is in some respects a trustee: S. L. Act, 1882, s. 53.

(*h*) If the life interest is acquired under a Will, see Sect. I., Form No. 16, *sup.*, which recital can be adapted, the beneficial trusts being mentioned to show the life interest.

Settlement made in consideration of the said marriage) the Trustees were directed to stand possessed of certain investments which had been transferred to them by the Vendor and of the net proceeds of sale arising under the Conveyance and of the investments for the time being respectively representing the same (hereinafter called the Husband's Trust Fund) and of the income thereof, Upon trust after the said marriage to pay the said income to the Vendor during his life, and after his death Upon certain trusts for the benefit of M. B. and the issue of the then intended marriage, And the Settlement contained a power for the Trustees, with the consent of the Vendor and M. B. during their joint lives and of the survivor of them during his or her life, to raise any part or parts not exceeding together one-half of the presumptive or vested share of any child or other issue of the said marriage under the trusts thereof and to pay or apply the same for his or her advancement or benefit as therein mentioned, And it was thereby provided that the Trustees should stand possessed of the net rents and profits of the hereditaments comprised in the Conveyance for the time being remaining unsold (after payment of the outgoings therein mentioned), Upon and subject to the same trusts and powers as were thereby declared concerning the annual income of the Husband's Trust Fund (i) :

As to power of advancement.

AND WHEREAS no advances have ever been made for the benefit of the issue of the said marriage under the power of advancement aforesaid :

As to the condition of the Husband's Fund.

AND WHEREAS no sales of any of the hereditaments comprised in the Conveyance have ever been made and the Husband's Trust Fund now consists of the proceeds of sale to arise from the said hereditaments and of the investments and money mentioned in the Schedule hereto and standing in the names of the Trustees as the present Trustees of the Settlement :

Agreement for sale.

AND WHEREAS the Vendor has agreed to sell his life interest in the Husband's Trust Fund to the Purchaser free from incumbrances at the price of £—— :

---

(i) If new trustees have been appointed recite the power of appointment and the separate deeds appointing trustees of the conveyance and the settlement. If there have been several deeds and changes among trustees a schedule can be used (see Sect. I., Form No. 12, *sup.*), and the effect of the schedule can be recited.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby assigns and releases unto the Purchaser

Assignment of life interest in investments and proceeds of sale of land.

ALL THAT the life interest of the Vendor in

FIRST, ALL THOSE, &c. (*set out the parcels from the Conveyance*), or in the net proceeds of sale thereof or in the investments for the time being representing the same ;

Parcels.

AND SECONDLY, ALL AND SINGULAR the investments and money mentioned in the Schedule hereto and in all other (if any) the investments and property for the time being representing the Husband's Trust Fund,

TO HAVE AND RECEIVE the premises unto the Purchaser (*k*), discharged during the lifetime of the Vendor from any liability to reduction by reason of any exercise of the aforesaid power of advancement :

Habendum.

2. THE Vendor hereby covenants with the Purchaser that the Vendor (*l*) will not during his lifetime, as regards the Husband's Trust Fund, consent to the exercise of the power of advancement aforesaid.

Covenant as to power of advancement.

3. PROVIDED ALWAYS, that nothing herein contained shall prejudice or affect the right of the Vendor to consent to or request the sale or other authorised disposition of any of the hereditaments comprised in the Conveyance, or of the variation of any investments representing the Husband's Trust Fund, or of the investment of any money forming part of that fund, nor render necessary the concurrence of the Purchaser or the persons deriving title under him in effecting any such sale, disposition, variation or investment (*m*).

As to changes of investment.

IN WITNESS, &c.

(*Add a Schedule of investments, &c.*)

(*k*) Notice in writing of the assignment must be given to the trustees, of whom inquiries should be made of the state of the property and as to notices of any dealings with the life interest. A *distringas* notice can be placed on the stock.

(*l*) See Conv. Act, 1881, s. 52.

(*m*) The deeds in this case would be in the custody of the trustees ; as to the purchaser's right to production, see Dart, 7th ed., 485.

## No. III.

CONVEYANCE of a REMAINDER in FEE SIMPLE *expectant on*  
a LIFE ESTATE (*n*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Recital of Will.

WHEREAS X. Y., being at his death seised in fee simple in possession free from incumbrances of the hereditaments herein-after described, duly made his Will dated the — day of —, and thereby, after appointing M. and N. to be his executors and trustees for the purposes of the Settled Land Acts, 1882 to 1890, devised all his real estate (including the hereditaments hereinafter described), To the Use of E. F. during his life, with remainder To the Use of the Vendor in fee simple :

Death of testator and probate.

AND WHEREAS the said testator died on the — day of — without having revoked or altered his said Will, which was on the — day of — duly proved at the — Probate Registry by the executors therein named (*o*) :

Agreement for sale subject to the life estate and to death duties.

AND WHEREAS the Vendor has agreed to sell to the Purchaser free from incumbrances the hereditaments hereinafter described (subject to the life estate therein of the said X. Y. and to the duties (if any) payable on his death in respect of the same hereditaments (*p*)) at the price of £—— :

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(*n*) The Sales of Reversions Act, 1867, provides, that “no purchase made *bona fide* and without fraud or unfair dealing of any reversionary interest in real or personal estate, shall, after the 1st of January, 1868, be opened or set aside merely on the ground of undervalue.” The jurisdiction of the Court over unconscionable bargains is not affected by this Act: *Fry v. Lane* (1889), 40 Ch. D. 312; 58 L. J. Ch. 113, and cases therein cited; Dart, 7th ed., 748; *Brenchley v. Higgins* (1900), 83 L. T. 751; 70 L. J. Ch. 788. In this Precedent it is assumed that no copyholds, leaseholds, or capital money are to be sold.

Assent to the devise.

(*o*) If the testator died after 1897, then add here a recital of the executor's assent to the devise. If the vendor originally took an estate tail, then the disentailing assurance must be recited.

(*p*) See note as to duties, Prec. X., Agreements for Sale, p. 256, *sup.* If the duties are to be commuted or the purchaser is to be indemnified against them, see clause 3 of the same Precedent.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

Conveyance of legal estate in remainder.

ALL THOSE, &c. (*see Forms, Sect. II., sup.*),

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple, subject to the life estate therein of the said E. F. and to the duties (if any) payable on the death of the said E. F. in respect of the same hereditaments (*q*).

Habendum.

IN WITNESS, &c.

#### No. IV.

#### RELEASE of an EXECUTORY DEVISE to the OWNER of the FIRST ESTATE.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Parties.

WHEREAS G. H. duly made his Will dated, &c., and thereby after appointing M. and N. to be his executors and trustees for the purposes of the Settled Land Acts, 1882 to 1890, devised all his lands and hereditaments, situated, &c., To the Use of the Purchaser in fee simple, But in case the Purchaser should die without leaving issue living at his death (*r*) then the said testator devised his said lands and hereditaments To the Use of the

Recital of Will devising lands in fee, with executory devise over.

(*q*) In this case the deeds will be in the custody of the tenant for life. Notice of this conveyance should be given to the S. L. Act trustees in case the land is disposed of under those Acts.

(*r*) By the Conv. Act, 1882, s. 10, it is provided, with respect to instruments coming into operation after 1882, that where there is a person entitled (see *Re Shrubbs*, 1910, W. N. 143) to land for an estate in fee, or for a term of years absolute or determinable on life, or for a term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period of time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years of the class on default or failure whereof the limitation over was to take effect; see notes on this section: Wolst. Conv. Acts, 9th ed., 162.

Restriction on executory limitations.

The first devisee in the case in the text has the statutory powers of a tenant for life: S. L. Act, 1882, s. 58 (1) (ii).

Vendor in fee simple (*death of G. H. and probate of his Will as in last Precedent, adding recital of assent by executors if testator died after 1897*):

Agreement  
for sale.

AND WHEREAS the Vendor has agreed to sell all his interest in the said lands and hereditaments to the Purchaser at the price of £——:

Release.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby releases and confirms unto the Purchaser

Parcels.

ALL the lands and hereditaments so devised by the recited Will of the said G. H. to the uses aforesaid,

Habendum.

TO HOLD unto and TO THE USE of the Purchaser in fee simple, free from the aforesaid executory devise or limitation over to the Vendor, and from all other claims and demands whatsoever of the Vendor in respect thereof.

IN WITNESS, &c.

#### No. V.

#### CONVEYANCE of the BENEFIT of an EXECUTORY DEVISE to a PURCHASER (s).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part:

Contingent  
estates

(s) By the R. P. Act, 1845, s. 6, all contingent, executory, and future interests in tenements or hereditaments of any tenure are disposable by deed.

Contingent  
remainders.

The same Act (s. 8) provides that a contingent remainder shall not be defeated by the forfeiture, surrender, or merger of the preceding estate of freehold; so that as to any contingent remainder created before the passing of the Contingent Remainders Act, 1877 (40 & 41 Vict. c. 33), its failure depends on the particular estate of freehold naturally determining during the contingency, or on the non-happening of the contingent event. But it is provided by the last-mentioned Act that every contingent remainder created after the passing of that Act shall, in the event of the particular estate determining before the contingent remainder vests, be capable of taking effect as if it had originally been created as a springing or shifting use or executory devise or other executory limitation, see *White v. Summers*, 1908, 2 Ch. 256; 77 L. J. Ch. 506.

WHEREAS (*Recite Will creating executory devise, and death of testator and probate of his Will, as in last Precedent, saying "C. D." instead of "the Purchaser" and "the hereditaments hereinafter described" instead of describing the property*) : Recital of Will creating executory devise.

AND WHEREAS the said C. D. has not at present any issue [or has one child only, namely —, who is of the age of — years]:

AND WHEREAS the Vendor has agreed to sell all his estate and interest under the said Will in the hereditaments hereinafter described (which hereditaments form part of the real estate devised by the said Will) to the Purchaser at the price of £— : Agreement for sale.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser Conveyance.

ALL the estate, right, and interest of the Vendor under or by virtue of the said Will in

ALL, &c. (*see Forms in Sect. II.*), Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple. Habendum.

IN WITNESS, &c.

## No. VI.

### ASSIGNMENT of a REVERSIONARY SHARE in the PROCEEDS of SALE of LAND held on trust for sale, and in RESIDUARY PERSONAL ESTATE under a WILL (t).

THIS INDENTURE, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part : Parties.

WHEREAS X. Y. duly made his Will dated the — day of —, and thereby, after appointing M. and N. to be his executors and trustees, devised and bequeathed all his real estate and the residue of his personal estate to his trustees Upon trusts for sale and conversion (with power to postpone sale at the discretion of his trustees), And directed his trustees (after Recital of Will

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(t) Notice of this assignment should be given to the trustees of the Will, and *distringas* notices put on the stock.

payment of his funeral and testamentary expenses and debts and the legacies thereby bequeathed) to invest the residue of the money to arise from such sales and his ready money in manner therein mentioned (with power to vary investments), and to stand possessed of such investments or the varied investments for the time being representing the same, Upon trust to pay the annual income thereof to Jane Y. (the testator's widow) during her life, and after her death, and in the event (which happened) of the testator dying without leaving any issue him surviving, as to both the capital and income of the premises, In trust for the Vendor and E. F. in equal shares as tenants in common :

Death of  
testator and  
probate.

AND WHEREAS the said testator died on the — day of — without having revoked or altered his said Will, which was on the — day of — duly proved at the — Probate Registry by the executors therein named :

State of  
residuary  
estate.

AND WHEREAS the executors of the said Will have out of the said testator's personal estate paid his funeral and testamentary expenses and debts and the legacies bequeathed by the said Will and the estate duty payable in respect of the estate, and the residue of the said testator's estate is now represented by the investments mentioned in the first Schedule hereto and the hereditaments mentioned in the second Schedule hereto :

Agreement  
for sale.

AND WHEREAS the Vendor has agreed to sell her moiety or other interest to which she is entitled in reversion under the said Will to the Purchaser subject to the death duties hereinafter mentioned, but otherwise free from incumbrances, at the price of £— :

Assignment.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser

Parcels.

ALL (u) THAT the moiety or other share or interest to which the Vendor is now under the recited Will of the said X. Y. entitled expectant upon the death of the said Jane Y. as aforesaid in the investments mentioned in the first Schedule hereto or the varied investments for the time being representing the same, and in the proceeds of sale of the hereditaments mentioned in the second Schedule hereto, and in all other (if any) the investments, hereditaments, money and securities now or hereafter to be held

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(u) See also Form No. 23, Sect. II., *sup.*

upon the trusts declared by the recited Will concerning the residuary estate thereby devised and bequeathed,

TO HAVE AND RECEIVE the same unto the Purchaser absolutely, *Habendum.*  
subject to the legacy and other duties (if any) payable thereon  
upon the death of the said Jane Y.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

Particulars of investments.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Particulars of hereditaments.

### No. VII.

ASSIGNMENT *by a MARRIED WOMAN, married before*  
1883 (x), *of her REVERSIONARY INTEREST in PERSONALTY*  
*under a WILL made after 1857 (y).*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. B., his wife (hereinafter called the Vendors), of the one part, and E. F., of, &c. (hereinafter called the Purchaser), of the other part: (*Recite Will of G. H., giving a legacy of £10,000 to Trustees in trust for L. M. for life and then for his children attaining twenty-one, or being daughters on marriage, death of testator, and probate of Will*):

AND WHEREAS the Trustees have appropriated the sum of £10,000 to answer the said legacy, and have paid thereout the sum of £—— for legacy duty and invested the residue thereof

(x) *I.e.*, before the M. W. P. Act, 1882.

(y) The Married Women's Reversionary Interests Act, 1857 (Malin's Act, 20 & 21 Vict. c. 57), enabled a married woman with the concurrence of her husband and by deed acknowledged to dispose of her reversionary interest under an instrument, not being a marriage settlement, made after 1857. A Will republished after 1857 is not an instrument made after that day: *Re Elcom*, 1894, 1 Ch. 303; 63 L. J. Ch. 392.

in the purchase of the investments mentioned in the Schedule hereto :

That Vendor,  
one of  
such children,  
has attained  
twenty-one.

AND WHEREAS the said L. M. has six children, of whom the said C. B. (who intermarried with the said A. B. on the — day of — 1875) is one, and all of whom have attained the age of twenty-one years :

No settlement.

AND WHEREAS no settlement or agreement for a settlement was made on the marriage of the said C. B. or otherwise affecting her interest under the recited Will :

Agreement for  
sale.

AND WHEREAS the Vendors have agreed to sell to the Purchaser the one-sixth or other reversionary share and interest of the said C. B. in the said trust legacy at the price of £— :

Assignment by  
husband and  
wife of  
the latter's  
reversionary  
interest.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration, &c., the said C. B., As Beneficial Owner, with the concurrence of the said A. B., her husband, hereby assigns and disposes of and the said A. B., her husband, As Beneficial Owner, hereby assigns and confirms unto the Purchaser

Parcels.

ALL (z) THAT the one-sixth share or other interest expectant on the death of the said L. M. to which the said C. B. or the said A. B. in her right is now or may hereafter be or become entitled under the recited Will of the said G. H., deceased, in the investments mentioned in the Schedule hereto, or other the investments for the time being representing the said trust legacy of £10,000, and the annual income thereof,

Habendum.

TO HAVE AND RECEIVE the premises unto the Purchaser absolutely, but subject to all duties which may become payable in respect of the same on the death of the said L. M.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Particulars of investments.

(*Memorandum of acknowledgment by C. B., Form No. 10,  
Sect. III.*)

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(z) See also Form No. 23, Sect. II., *sup.* Notice should be given to the trustees of the assignment and a *distringas* placed on the stocks.

## No. VIII.

ASSIGNMENT *of a* POLICY *of* LIFE ASSURANCE (a).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Parties.

WHEREAS the Vendor is entitled free from incumbrances to the policy of assurance on his life hereinafter mentioned and has agreed to sell the same to the Purchaser at the price of £—— :

Agreement for sale.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser

Assignment of policy.

ALL THAT policy (*Form No. 22, Sect. II., sup.*),

Parcels.

To HAVE AND RECEIVE the same unto the Purchaser absolutely.

Habendum.

IN WITNESS, &c.

GROUP J.—CONVEYANCES ON SALES OF MISCELLANEOUS INTERESTS  
IN PROPERTY AND THINGS IN ACTION.

## No. I.

ASSIGNMENT *of a* BOND DEBT (b) *by indorsement on the bond.*

THIS INDENTURE, made, &c., BETWEEN the within-named A. B. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part :

Parties.

(a) This deed will pass the right to sue on the policy, if a written notice of the assignment is given to the company as prescribed by the Policies of Assurance Act, 1867, s. 3, and if it is duly stamped, but not otherwise, see Stamp Act, 1891, s. 118; *Alpe*, 11th ed., 228-9; *Highmore*, 2nd ed., 211. A form of notice of an assignment of a policy by way of mortgage will be found in *Instruments relating to Mortgages*, p. 1025, *inf.*, which can be adapted to an absolute assignment by omitting “by way of mortgage.” The notice does not affect the position as between the persons interested in the policy, and a subsequent incumbrancer, by giving notice, does not gain priority over a previous incumbrancer who did not do so: *Newman v. N.* (1885), 28 Ch. D. 674; 54 L. J. Ch. 598.

Assignment of policy of life assurance.

(b) Notice of the assignment must be given to the debtor, and from the date of such notice the assignment is effectual to pass the legal right to the bond and all legal remedies thereunder; hence a power of attorney is

Legal right to chose in action passes on notice of assignment.

State of debt. WHEREAS the principal sum of £—— secured by the within-written bond remains owing with arrears of interest thereon amounting to £—— :

Agreement to sell. AND WHEREAS the Vendor has agreed to sell the said bond debt to the Purchaser at the price of £—— :

NOW THIS INDENTURE WITNESSETH as follows:—

Assignment of bond debt. 1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser

Parcels. ALL THAT the principal sum of £—— secured by the within-written bond, and the sum of £——, now due for arrears of interest thereon, and all interest henceforth to become due for the same, and also the said bond and the full benefit and advantage thereof,

Habendum. To HOLD unto the Purchaser absolutely.

Covenant by Vendor that bond debt remains due. 2. THE Vendor hereby covenants with the Purchaser that the said principal sum of £—— now remains owing on the said bond, together with the sum of £—— for arrears of interest thereon.

IN WITNESS, &c.

## No. II.

### ASSIGNMENT *of a JUDGMENT DEBT (c).*

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D. of, &c., (hereinafter called the Purchaser), of the other part:

Recite judgment. WHEREAS the Vendor on the —— day of —— obtained a judgment in the High Court of Justice (King's Bench Division) against E. F., of, &c., in an action having the short title of A. B. v. E. F., No. ——, for the sum of £——, and costs:

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unnecessary: Judicature Act, 1873, s. 25 (6); see also *Walker v. Bradford Old Bank* (1884), 12 Q. B. D. 511; 53 L. J. Q. B. 280; and cases collected in the Annual Practice on this section.

It is conceived that the stamp on this assignment will be 6*d.* for every £100 of the money owing on the bond, including the arrears of interest.

(c) See note to last Precedent.

AND WHEREAS the sum of £—— is now owing for principal, interest and costs on the said judgment: Amount of judgment debt.

AND WHEREAS the Vendor has agreed to sell to the Purchaser the said judgment debt at the price of £——: Agreement for sale.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration, &c. (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser Assignment.

ALL THAT the sum of £——, now owing on the said judgment as hereinbefore mentioned, and all interest hereafter to become due on the said judgment, and the full benefit of the said judgment and of all other securities for the said debt: Parcels.

To HOLD unto the Purchaser absolutely: Habendum.

AND the Vendor hereby covenants with the Purchaser that the whole of the said sum of £—— remains owing on the said judgment.

IN WITNESS, &c.

### No. III.

#### ASSIGNMENT *of the* COPYRIGHT *in a* BOOK (*d*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: Parties.

WHEREAS the Vendor is absolutely entitled to the copyright of the several editions of the book mentioned in the Schedule hereto, and has agreed to sell the same to the Purchaser at the price of £——: Title of Vendor to copyright.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration, &c., the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser Assignment copyright.

ALL THAT the copyright in the several editions of the book mentioned in the Schedule hereto,

---

(*d*) This assignment should be entered at Stationers' Hall. To avoid stamp duty the assignment may be effected by the use of the form given in the schedule to the Copyright Act, 1842.

TOGETHER with the exclusive right for the Purchaser and the persons deriving title under him to publish (*id*) any future editions of the said book under the title “ — ”,

Habendum.

TO HAVE AND RECEIVE the premises unto the Purchaser absolutely.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(Insert the particulars of the book, and add at the end of the Schedule “ Entered at Stationers’ Hall on the — day of — ”.)

No. IV.

ASSIGNMENT of LEASEHOLDS and of the GOODWILL and PROPERTY of a BUSINESS, including a TRADE MARK (*c*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor) [and E. B., his wife], of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part (*Recite Lease to Vendor, Form No. 28, Sect. I., sup.*):

Recite that Vendor carries on business, and is the registered owner of trade mark.

AND WHEREAS the Vendor has for some years past carried on the trade or business of — at the said premises, and he is the registered proprietor, in connexion with the said business, of a trade mark, No. — in the Register of Trade Marks for goods in classes — of the third schedule to the Trade Marks Rules, 1906 (*cc*):

(*id*) See *Booth v. Lloyd* (1910), 26 T. L. R. 549.

(*c*) See notes to Prec. VII. of Agreements for Sale, p. 251, *sup.*

Under this deed the purchaser will be entitled to use the name of the vendor for the purpose of showing that the business was that formerly carried on by him, but he must not exercise that right so as to expose the vendor to liability: *Thynne v. Shore* (1890), 45 Ch. D. 577; 59 L. J. Ch. 509. The vendor cannot, apart from express agreement, compel the purchaser to erase the name of the vendor carved over a shop: *Townsend v. Jarman*, 1900, 2 Ch. 698; 69 L. J. Ch. 823.

A registered trade mark may be assigned only in connexion with the goodwill of the business: Trade Marks Act, 1905, s. 22. This assignment should be registered at the Patent Office: s. 33.

The stamp on this assignment will be *ad valorem* on the amount of the purchase-money *plus* the amount of the debts against which the purchaser covenants to indemnify the vendor.

(*cc*) See 1906, W. N., Part II., p. 75.

AND WHEREAS the Vendor has agreed to sell to the Purchaser the said leasehold premises and all his interest and goodwill in the said trade or business, together with the said trade mark and the book and other debts hereinafter mentioned, at the price of £—— (*f*), and upon the terms hereinafter mentioned:

Agreement  
for sale of  
goodwill, &c.

AND WHEREAS the Vendor has delivered to the Purchaser the books of account and other books relating to the said business, and in the said books are contained the amounts and particulars of the debts respectively due and owing to and from the Vendor, and also the particulars of the contracts and engagements to which he is liable in respect of the said trade or business:

Delivery to  
Purchaser of  
books of  
account.

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (*the receipt, &c.*), and also in consideration of the covenants on the part of the Purchaser hereinafter contained, the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser

Assignment.

ALL the premises comprised in and demised by the recited Lease,

Parcels.

AND ALSO ALL the interest and goodwill of the Vendor in the said trade or business of ——,

AND ALSO the said trade mark and all privileges incidental thereto;

AND ALL the book (*f*) and other debts now due and owing to the Vendor on account of the said trade or business, and the benefit of all contracts and engagements entered into with the Vendor in respect of the said trade or business,

To HOLD, as to the said leasehold premises, unto the Purchaser for the residue of the term granted by the recited Lease, subject to the rent thereby reserved and to the covenants and conditions therein contained and henceforth on the part of the lessee to be

Habendum.

(*f*) The stock-in-trade, if included in the sale, should be paid for separately, and should be made over to the purchaser by delivery. After such delivery the Vendor should give a receipt for the purchase-money with an inventory attached.

Stock-in-trade.

(*f*) Bills receivable and bonds are book debts, but not cash at bankers: *Re Stevens*, 1888, W. N. 110, 116; *Re Haigh* (1907), 51 Sol. J. 343; but a bill left at bankers and not actually discounted may be treated as a book debt: *Dawson v. Isle*, 1906, 1 Ch. 633; 75 L. J. Ch. 338.

Book debts.

paid, observed and performed, and as to the other premises hereby assigned, unto the Purchaser absolutely.

Power of  
attorney.

2. THE Vendor, for the consideration aforesaid, hereby irrevocably appoints the Purchaser his attorney for him and in his name or otherwise to sue for, recover and receive, and give effectual discharges for the debts hereby assigned.

Covenants by  
Vendor—  
that books are  
correct,

3. THE Vendor hereby covenants with the Purchaser that the amount and particulars of the debts due and owing to and from the Vendor on account of the said trade or business, and the particulars of the contracts and engagements to which he is liable in respect of the said trade or business, are correctly stated in the books of account and other books so as aforesaid delivered by the Vendor to the Purchaser, and that the Vendor will pay all the sums (if any) which may now be due and owing from the said trade or business in excess of the amounts which, by the said books, appear to be so due and owing,

and that  
Vendor will  
pay all sums  
exceeding the  
amount ap-  
pearing due  
by the books ;  
and that he  
will do his best  
to secure  
custom to  
Purchaser,

AND ALSO that the Vendor will from time to time, and at all times hereafter, use his best endeavours to promote the said trade or business, and to secure to the Purchaser, his executors, administrators and assigns, the full advantage of the connexion and custom of the Vendor in the said trade or business, but so that the Vendor shall not be required to incur any expense in or about the performance of this covenant,

and will not  
carry on, &c.,  
business  
within speci-  
fied limits.

AND ALSO that the Vendor, his heirs, executors or administrators, will not at any time hereafter [*or during a term of — years from the date hereof*], either alone or jointly, or in partnership with, or as agent for any other person or persons, and either directly or indirectly, carry on or be concerned or interested in, or assist any other person or persons to carry on or be concerned or obtain any interest in, the trade or business of a — within — miles from — (*g*).

Covenant by  
Vendor's wife  
to same effect.

[4. THE said E. B. (*h*) hereby covenants with the Purchaser that the said E. B. will not by means of her separate estate or otherwise carry on or be concerned or interested in the trade or business of a — within the limits aforesaid, or do or be a party to any act or thing which, if done by the Vendor, would

(*g*) See note (*k*) to Prec. VII., Agreements for Sale, p. 253, *sup.*; also *Cash v. C.* (1902), 86 L. T. 211.

(*h*) See note (*l*) to Prec. VII., Agreements for Sale, p. 253, *sup.*

be a breach of any of the covenants on his part hereinbefore contained.]

5. THE Purchaser hereby covenants with the Vendor, &c. Covenant by Purchaser to indemnify Vendor against rent, &c., debts due from the business, and from contracts and engagements.  
*(to indemnify him against rent and covenants in Lease, Form No. 5, Sect. III., sup.),*

AND ALSO that the Purchaser will from time to time, and at all times hereafter, keep indemnified the Vendor and his estate and effects from and against the several sums of money which by the said books appear to be due and owing from the Vendor in respect of the said trade or business, and also from and against the contracts and engagements to which by the said books the Vendor appears to be now liable, and also all interest, costs, expenses, losses, claims and demands on account of the same debts, contracts and engagements respectively.

[6. The assignment hereinbefore made does not include any personal chattels forming the stock-in-trade of the business (i).] [Exception of chattels.]

*(Add acknowledgment, &c., as to documents, Form No. 6, Sect. III., sup., if required.)*

IN WITNESS, &c.

## SECTION V.

### MISCELLANEOUS INSTRUMENTS RELATING TO SALES.

#### No. I.

CONVEYANCE of a PIECE of LAND which had been unintentionally omitted in the Deed conveying the BULK of the PROPERTY (by Indorsement on Principal Conveyance).

THIS INDENTURE, made, &c., BETWEEN the within-named Parties,  
 A. B. (hereinafter called the Vendor) of the one part, and the within-named C. D. (hereinafter called the Purchaser) of the other part :

WHEREAS before the execution of the within-written Indenture the Vendor agreed to sell to the Purchaser the hereditaments hereinafter described, as well as those comprised in the said Indenture, at the within-mentioned price of £—, but by an Recite omission of land, and agreement to execute present assurance.

(i) See note (m) to Prec. VII., Agreements for Sale, p. 234, *sup.*

unintentional omission the hereditaments hereinafter described were not described or referred to in the said Indenture, and for the purpose of rectifying and supplying such omission the Vendor has agreed to execute such deed of confirmation as is hereinafter contained :

|             |  |
|-------------|--|
| Conveyance. | NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the premises, the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser |
| Parcels.    | ALL, &c. ( <i>see Forms in Sect. II.</i> ),  |
| Habendum.   | To HOLD unto and To THE USE of the Purchaser in fee simple.  |
|             | IN WITNESS, &c.  |

## No. II.

### ACKNOWLEDGMENT of RIGHT to PRODUCTION of DEEDS and UNDERTAKING for SAFE CUSTODY. (*Several forms adapted to the circumstances (k).)*)

#### 1. (*Where the Vendor is Beneficial Owner.*)

By Beneficial  
Owner by  
separate  
writing.

To X. Y., of, &c. (*Purchaser*).

I, A. B., of, &c. (*Vendor*), hereby acknowledge your right to production and delivery of copies of the documents mentioned in

(k) See Wolst. Conv. Acts, 9th ed., 46—52.

As a general rule it is more convenient to insert the acknowledgment in the deed of conveyance, and there is now no objection to this, having regard to the Conv. Act, 1881, s. 3 (3), which precludes a purchaser from requiring the production of a document dated prior to the stipulated commencement of title, merely because it is covenanted to be produced or otherwise noticed in an abstracted deed. But there may be special circumstances rendering a separate instrument desirable. It need not be under seal, but it should have a *6d.* agreement stamp.

Stamp.

If desired, the acknowledgment may be given in the form of an agreement (under a *6d.* stamp) as follows :—

Full form of  
Acknowledg-  
ment and  
Undertaking.

AN AGREEMENT, made the — day of —, 19—, between A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part, Supplemental to an Indenture (hereinafter called the Principal Indenture) bearing even date herewith, and made between the Vendor of the 1st part, E. F. of the 2nd part,

the Schedule hereto, which documents relate to (among other property) a piece of land [*or to divers lands and hereditaments*] situated at, &c., conveyed to you by an Indenture dated the — day of —, 19—, and made, &c.: AND I hereby undertake for the safe custody of the said documents.

AS WITNESS my hand this — day of —, 19—.

THE SCHEDULE ABOVE REFERRED TO.

Documents retained in the custody of the said A. B.

1st February, 1860. Indenture of Mortgage of this date, made, &c.

12th December, 1865. Indenture of Reconveyance of this date, &c.

2. (*Where Vendors are Trustees.*)

By Trustees.

To X. Y., of, &c. (*Purchaser*).

WE, C. D. and E. F. (*Trustees*), hereby acknowledge, &c. (*as in No. 1, omitting the undertaking for safe custody*) (I).

and the Purchaser of the 3rd part (being a Conveyance on Sale of —, in the County of —):

WHEREAS upon the execution of the Principal Indenture it was agreed that the Vendor should retain the custody of the documents mentioned in the Schedule hereto and give such acknowledgment and undertaking in respect of the same as are hereinafter contained:

NOW the Vendor hereby acknowledges the right of the Purchaser to production of the documents mentioned in the Schedule hereto and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*To contain a list of the documents retained by the Vendor.*)

(I) Where a sale is made by a Mortgagor with the concurrence of mortgagees who retain the deeds, the mortgagees will give an acknowledgment in the conveyance, and the mortgagor can also give a covenant, see Form No. 7, Sect. III., *sup.*, if required. In practice the acknowledgment by the mortgagee without any undertaking is usually accepted.

By mortgagee  
and mortgagor.

By different  
persons as to  
different  
deeds.

3. (*Where different persons give the acknowledgment as to different deeds.*)

To X. Y., of, &c. (*Purchaser*).

I, A. B., of, &c., having in my custody the documents mentioned in the first part of the Schedule hereto, AND WE, C. D., of, &c., and E. F., of, &c. (*Trustees*), having in our custody the documents mentioned in the second part of the said Schedule, AND I, G. H., of, &c., having in my custody the documents mentioned in the third part of the said Schedule, all which documents comprised in the first, second, and third parts of the said Schedule relate, &c. (*as in No. 1*), hereby acknowledge your right to production and delivery of copies of the said documents respectively : AND WE, the said A. B. and G. H., hereby undertake for the safe custody of the documents mentioned in the first and third parts of the said Schedule respectively.

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

*First Part.*

Documents retained in the custody of the said A. B.

*Second Part.*

Documents retained in the custody of the said C. D. and E. F.

*Third Part.*

Documents retained in the custody of the said G. H.

By largest  
Purchaser to  
other Pur-  
chaser.

4. (*Where upon a sale in Lots the deeds have been delivered to one of the Purchasers, who gives an acknowledgment, &c., to another Purchaser (m).*)

To X. Y., of, &c. (*a Purchaser*).

I, A. B., of, &c. (*largest Purchaser*), having lately received from L. M., of, &c. (*Vendor*), the documents mentioned in the Schedule

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(m) This arrangement is sometimes made. But it is more convenient for the Vendor to give the acknowledgment, &c., to every purchaser, retaining the documents for that purpose until all the purchases have been completed. The liability under the Vendor's acknowledgment will pass to the purchaser to whom the documents are delivered.

hereto, which documents relate to certain hereditaments situated at, &c., purchased by me from the said L. M., and conveyed to me in fee simple by an Indenture dated the — day of —, 19—, and also to certain land situated at —, lately purchased by you from the said L. M., and conveyed to you in fee simple by an Indenture dated, &c., do hereby acknowledge your right to production and delivery of copies of the said documents, and I hereby undertake for the safe custody thereof.

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

5. (*Where the deeds are handed over to a Purchaser of the bulk of the property affected by them, he giving an acknowledgment, &c., to the Vendor (n).*)

By Purchaser  
to Vendor.

To X. Y., of, &c. (*Vendor*).

I, A. B., of, &c. (*Purchaser*), having received from you the documents mentioned in the Schedule hereto, which documents relate to certain hereditaments situated at, &c., conveyed by you to me in fee simple by an Indenture dated the — day of —, 19—, and also to certain other hereditaments which remain your property, do hereby acknowledge your right to production, &c. (*as in No. 4 to end*).

THE SCHEDULE ABOVE REFERRED TO.

6. (*Where a Purchaser gives a former Purchaser with whom the Vendor had entered into a covenant for production of deeds an acknowledgment and undertaking in substitution for the covenant.*)

Acknowledg-  
ment in lieu of  
a covenant.

WHEREAS by an Indenture dated, &c., and made BETWEEN E. F. of the one part, and C. D. of the other part, certain hereditaments situated, &c., were conveyed by the said E. F. To the Use of the said C. D. and his heirs, and by an Indenture bearing even date with the said Indenture the said E. F. entered into a covenant with the said C. D. for the production of the documents

Parties.  
Sale by  
original cove-  
nantor of part  
of heredita-  
ments to which  
the deeds  
relate, and  
contempo-  
raneous deed

(n) This is not a usual arrangement, as the vendor is entitled to retain the deeds, however small may be the property remaining unsold, but it is frequently done where the vendor merely reserves an easement.

of covenant by him for production of deeds, &c., with a proviso for determining covenant on Purchaser of remaining hereditaments entering into similar covenant.

Sale by original covenantor of remainder of hereditaments.

Agreement by Purchaser to give acknowledgment, &c.

Acknowledgment and undertaking by Purchaser.

comprised in the schedule hereto, subject nevertheless to a proviso that in case the said E. F., his heirs or assigns, should dispose of such of the hereditaments to which the said documents should relate as had not been so sold to the said C. D. as aforesaid, and should deliver the same documents to such Purchaser, and should thereupon procure such Purchaser to enter into a covenant with the said C. D. similar to the covenant thereinbefore contained, then the said covenant should cease and become void (o) :

AND WHEREAS by an Indenture dated, &c., and made, &c., for the consideration therein mentioned, such of the said hereditaments as were not so sold to the said C. D. as aforesaid have been conveyed by the said E. F. To the Use of the said A. B. in fee simple :

AND WHEREAS upon the treaty for the last-mentioned sale it was agreed that the said documents should be handed over to the said A. B. as such Purchaser as aforesaid, and that for the purpose of discharging the said E. F. from the obligation of the said covenant for that purpose contained in the recited Indenture of the — day of — the said A. B. should give the acknowledgment and undertaking hereinafter contained :

AND WHEREAS, in consequence of such arrangement, the said C. D. has delivered up to the said E. F. the said Indenture of Covenant dated the — day of — :

NOW the said A. B. hereby acknowledges the right of the said C. D. to production and delivery of copies of the documents mentioned in the Schedule hereto, and hereby undertakes for the safe custody thereof.

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

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(o) This case would not arise under an acknowledgment and undertaking, for the obligations only continue against the person giving them so long as he has control of the documents: Conv. Act, 1881, s. 9 (2), (9).

No. III.

STATUTORY DECLARATION *as to* IDENTITY *of* LANDS  
contracted to be sold with PROPERTY to which a TITLE is  
shown (p).

I, A. B., of, &c. (*Declarant*), solemnly and sincerely declare as follows:—

1. I KNOW the farm and lands situated in the Parish of —, known as the — Farm, particularly described in the Schedule hereto and delineated on the plan hereto annexed, and which farm and lands have been contracted to be sold by C. D., of, &c., to E. F., of, &c.

That declarant knows the property.

Or,

I KNOW the piece of land [*or* the house and garden] situated at —, delineated and shown on the plan (*as above*).

2. THE said farm and lands were formerly the property of F. D., the father of the said C. D., and were in his possession at the time of his death, which happened in the year 18—. On his death the same came into the possession of the said C. D., who has remained in undisturbed possession or receipt of the rents and profits thereof up to this time.

Possession of property by Vendor and his predecessor in title.

Or,

THE said piece of land is part of the land which was conveyed to F. D., the father of the said C. D., by an Indenture dated the —day of —, 18—, by the following description, namely (*set out description verbatim*).

(p) See Statutory Declarations Act, 1835. A “statutory declaration” means a declaration made under that Act: Interpretation Act, 1889, s. 21. There appears to be no settled practice as to admitting as evidence a statutory declaration made in the Colonies: *Re Hardwick*, 1907, W. N. 180.

Statutory Declarations.

When made in colonies.

A purchaser is not bound to accept a statutory declaration made by the vendor: *Hobson v. Bell* (1839), 2 Beav. 17; 8 L. J. Ch. 241. In practice it is always advisable to obtain a statutory declaration from some independent person if possible. It sometimes saves time if the purchaser prepares the draft and submits it to the vendor for approval.

By vendor.

The stamp is 2s. 6d., even if made before a justice of the peace: Fin. Act, 1907, s. 6; but if required for use at the Land Registry no stamp duty is charged: L. T. R. 1908, r. 327.

Stamp.

Or,

THE site of the said house and garden is part of a piece of land which was conveyed, &c. (*as above*). The said F. D. built the house in the year 18—, and occupied the same as his residence with the said garden up to the time of his death, which happened on the — day of —, 18—. I have been shown an extract from his Will, dated the — day of —, 18, whereby he disposed of the property in the following words, namely, “I devise my house at — to my son C. D.,” and I say that the testator had not at the date of his Will, or at the time of his death, any house at — other than the house above described.

Sources of  
knowledge.

3. I AM able to declare as above from having acted as the agent of the said C. D. and of his father, the said F. D., for the last — years and upwards, during the whole of which time I collected the rents of the property [*or* from having been the tenant of the property under the said C. D. and the said F. D. for the last — years and upwards, *or* from having lived in the Parish of — for the last — years, and having been well acquainted during the whole of that time with the D. family]: And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

DECLARED BEFORE ME, &c. (*Commissioner for Oaths*).

#### No. IV.

#### STATUTORY DECLARATION *as to* PEDIGREE (*q*).

I, A. B., of, &c. (*Declarant*), solemnly and sincerely declare as follows:—

Reference to  
family Bible.

1. I AM one of the grandchildren of C. D., who was, as I have been informed and believe, married to E. in the year 1820. The Bible now produced to me and marked D1 purports to be, and I believe was, the family Bible of the said C. D., and contains particulars as to his children.

Constitution  
of family;  
proof of a  
death.

2. It appears from the said family Bible that the said C. D. had three children, F., G. and H. The said F. died on the

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(*q*) See note to last Precedent.

— day of — at the age of — years without having been married, and she is the person mentioned in the certificate of burial now produced to me and marked D2.

3. THE said G. left England for — in the year 18—, and since that time neither he nor any descendants of his have ever been heard of by any of his family or connexions, and to the best of my knowledge, information and belief he has died without [leaving] ever having had any issue. Disappearance of member of family.

4. THE said H. was my father. He married J. on the — day of —, 18—. I was born on the — day of —, 18—, and am their only child. The certificates produced to me and marked respectively D3, D4, and D5, are the marriage certificate of the said H. with the said J., my own baptismal certificate, and the burial certificate of the said H., who died on the — day of —, 18—. Proof of marriage; birth of issue; death.

5. I MAKE this declaration from tradition in my family or from my own personal knowledge, conscientiously believing, &c. (as in last Precedent). Means of knowledge.

## No. V.

## MEMORIAL of a DEED of CONVEYANCE of LAND in MIDDLESEX (r).

— Year 19—. B. — No. —

## LAND REGISTRY. MIDDLESEX DEEDS ACTS.

( Land Registry Stamp, 5s. ) MEMORIAL OF A DEED. ( Inland Revenue Stamp, usually 2s. 6d. )

## PARTICULARS FOR THE INDEX.

| Grantor's Surname. | Grantor's Christian Name. | Parish.   |
|--------------------|---------------------------|-----------|
| Smith .....        | John .....                | Hounslow. |

(r) A statement of the principal provisions of the Middlesex Registry Acts, 1708 and 1891, will be found in the Dissertation, p. 71, *sup*. Regulations as to memorials,

The First Schedule to the Middlesex Reg. Act of 1891 and the Rules (W. N., 1892, Orders and Rules, p. 4) made under that Act prescribe regulations as to memorials which, read together, are in effect as follows:—

The memorial must be written or printed on the best white loan paper, to be written or printed on

|  |   |
|--|---|
| paper of a prescribed size, &c.                            | sixteen inches long by ten inches wide, with an inner margin two inches wide and an outer margin three-quarters of an inch wide, and must be left at the office by hand, must bear Land Registry stamps for the amount of the fees, and be accompanied by the original instrument.  |
| Signature and attestation.                                 | The memorial must be under the hand of some or one of the grantors, or some or one of the grantees (or in the case of a Will some or one of the devisees), his or their heirs, executors, or administrators, guardians, or trustees, attested by one witness, <i>such witness to be a witness or one of the witnesses to the execution of the original instrument</i> , unless at the date of the memorial every such witness is dead or absent from the United Kingdom or cannot be found, or some other sufficient cause exists to prevent it. In such cases a statutory declaration must be furnished and left with the memorial, stating the reason why the witness is not one of the witnesses to the instrument.  |
| Witness to memorial must be same as witness to instrument. |   |
| Contents of memorial.                                      | Every memorial of any deed, conveyance, or Will must contain the day of the month and the year when such deed, conveyance, or Will bears date, and the names and additions of all the parties to such deed or conveyance, and of the devisor or testatrix of such Will, and of all the witnesses to such deed, conveyance, or Will, and where practicable the places of their abode, and must express or mention the lands and hereditaments contained in such deed, conveyance, or Will, and the names of all the parishes within the county where any such lands or hereditaments are lying and being that are given, granted, conveyed, devised, or in any way affected or charged by any such deed, conveyance, or Will, in such manner as the same are expressed or mentioned in such deed, conveyance, or Will, or to the same effect. But these particulars will only be required so far as the same appear from the original instrument, except that the address or description of the witness to the memorial must in all cases be inserted. |
| Plans.   | Where the instrument contains a plan a copy thereof, or so much thereof as is referred to in the memorial, must be drawn on the memorial, unless owing to its size this cannot be done; in such case a tracing on linen signed by the person who signs the memorial and by the witness must be left with the memorial and filed at the office.  |
| Production of deed, &c., to registrar.                     | Every deed, conveyance, and Will, or probate of the same, of which a memorial is to be registered, must be produced to an officer of the registry at the time of registering the memorial. A certificate must be indorsed by an officer of the registry on the instrument, mentioning the day on which the memorial is registered, and expressing in what book and under what number the same is registered, and the certificate must be signed by an officer of the registry, and is to be taken and allowed as evidence of the registration in all Courts of record whatsoever.   |
| Memorials, how to be registered.                           | Every memorial must be numbered, and the day of the month and the year when every memorial is registered must be entered in the margin thereof, and the registrar is to file every such memorial, in order of time, as the same are brought to the registry, and register the said memorials in the same order that they respectively come to his hands.  |
| What a sufficient memorial, when                           | Where there are more writings than one for making and perfecting any  |

## FULL PARTICULARS OF DEED :—

Date of Deed : — of —, 19—.

Parties—John Smith, of, &c., Gentleman, of the one part ;

Robert Jones, of, &c., Gentleman, of the other part.

Description of lands affected—

ALL THAT, &c. (*as described in deed*).

Witnesses to execution of deed—

by John Smith,

A. B., of, &c.,

and by Robert Jones,

C. D., of, &c.

Signature of grantor [*or grantee*], John Smith [*or Robert Jones*].

Signature of witness to signing of memorial,

A. B., of, &c. [*or C. D., of, &c.,*

*according to whether the grantor or grantee signs the memorial*].

Instrument to be delivered to —.

conveyance or security which name, mention, or in any way affect or concern the same lands or hereditaments, it is a sufficient memorial and register thereof if all the said lands and hereditaments, and the parishes wherein the same lie, be only once named or mentioned in the memorial or register of any one of the deeds or writings made for the perfecting of such conveyance or security, and that the dates of the rest of the said deeds or writings relating to the said conveyance or security, with the names and additions of the parties and witnesses, and the places of their abodes, be only set down in the memorials and registers of the same, with a reference to the deed or writing whereof the memorial is so registered that contains or expresses the parcels mentioned in all the said deeds, and directions how to find the registering the same.

more than one writing.

Every memorial is to be compared by an officer of the registry with the instrument to which it relates; and any clerical, trifling, or obvious errors may be corrected by him. But if any error is found which appears to the officer unsuitable for such correction, its nature must be notified to the person who has left the memorial in the office, and (unless he satisfies the registrar that it is sufficient) the memorial may be returned and the registration be cancelled, the fee paid being retained, but no fee charged on a substituted memorial.

Errors may be rectified.

Forms of memorials are prescribed by the rules, and are obtainable at the Land Registry.

A memorial to be registered pursuant to any Act for the time being in Stamp force relating to the public registering of deeds in England or Ireland is liable to a stamp duty of 2s. 6d., unless the instrument to be registered is chargeable with a less duty, in which case the stamp on the memorial will be the same as that on the instrument: Stamp Act, 1891, Schedule.

## No. VI.

MEMORIAL of DEED of CONVEYANCE of LAND in YORK-  
SHIRE (s).

Volume —. Page —. No. —.

— Riding of Yorkshire. Registry of Deeds.

MEMORIAL of a deed of Conveyance for Registration.

Date—1st January, 19—,

Parties—John Smith, of, &amp;c., of the one part ;

Robert Jones, of, &amp;c., of the other part.

Description of lands—

ALL THAT, &c. (*as in deed*).

Witnesses—

A. B., of, &amp;c., witness to the execution by John Smith.

C. D., of, &amp;c., witness to the execution by Robert Jones.

(Signed) John Smith. (L.S.)

Witness—X. Y.

(*Other forms of Memorials will be found in the Schedule to the Land Registry (Middlesex Deeds) Rules, 1892, and in the Schedule to the North Riding of Yorkshire Registry Rules, 1885.*)

Regulations as to memorials relating to lands in Yorkshire.

(s) See Dissertation, pp. 74 *et seq.* Memorials of assurances and Wills relating to land in Yorkshire are subject to the following (among other) regulations:—

In the case of a deed the memorial must be under the hand and seal of some or one of the parties thereto, or some or one of their or his heirs, executors, administrators, guardians, or trustees, and must be attested by one or more witnesses, one of whom at least must have been a witness to the execution of the deed, and must contain (a) the date of the deed; (b) the names and descriptions of the residences and occupations of all the parties to the deed, so far as set out therein; (c) the names and descriptions of the residences and occupations of all the witnesses to the execution of the deed, so far as appear therein; (d) a description of all the lands affected by the deed within the riding, and the names of all the parishes wherein the same are situate, in such manner as the same are expressed or mentioned in the deed, or to the same effect; (e) the name and description of the residence and occupation of the person on whose behalf the memorial is to be registered; Yorkshire Registries Act, 1884, s. 6 (1). In the case of a Will, the memorial must be under the hand and seal of one

## No. VII.

## NOTICE to PURCHASER to Forfeit DEPOSIT and Cancel AGREEMENT (t).

To C. D., of, &c. (*the Purchaser*), and all others whom it may concern :

WHEREAS by an Agreement dated, &c., the Vendors agreed to sell and the Purchaser agreed to purchase (*parcels, &c.*) and it was also agreed that if the Purchaser should make default in payment of any sum due for interest for three calendar months after the same should become due, or if the Purchaser should fail to complete the purchase in accordance with that Agreement, then the deposit money should, at the Vendor's absolute option, be forfeited :

Memorandum  
of Agreement.

Agreement to  
forfeit deposit  
money on  
default.

of the trustees or executors of the Will, or of some or one or more persons claiming an interest thereunder in some of the lands affected thereby within the riding, and must be attested by one or more witnesses, and must contain (a) the date of the Will ; (b) the date of the death of the testator ; (c) the name and description of the residence and occupation of the testator, so far as set out in the Will ; (d) the names and descriptions of the residences and occupations of all the witnesses to such Will, so far as appear therein ; (e) a description of all the lands affected by the Will within the riding, and the names of all the parishes wherein the same are situate, so far and in such manner as the same are expressed or mentioned in the Will, or to the same effect ; (f) the name and description of the residence and occupation of the person on whose behalf the memorial is to be registered : s. 6 (2).

Regulations are also prescribed for the registration of memorials of orders of a Court, or certificates of appointments of trustees in bankruptcy, private Acts of Parliament, awards and orders of the Land Commissioners (now the Board of Agriculture and Fisheries), and memoranda of liens or charges : s. 6 (3)—(6), s. 7.

Memorials of  
orders of  
Court, &c.

No deed or Will can be registered unless the original or one of the originals of the deed, or the probate of the Will, be produced to the registrar at the time of registration : s. 8.

Production of  
original deed,  
&c., to  
registrar.

After the registration of any deed or Will, a certificate of such registration is directed to be indorsed on the deed or Will or probate, which certificate is receivable in evidence : s. 9.

Certificate of  
registration.

Rules have been made under the Act for the several ridings containing further regulations and prescribing forms to be used.

(t) A notice to rescind "without prejudice" is void : *Re Weston and Thomas*, 1907, 1 Ch. 244 ; 76 L. J. Ch. 179.

Payment of  
deposit-money  
and acceptance  
of title.

AND WHEREAS the Purchaser paid to the Vendors the deposit money agreed to be paid and entered into possession of the hereditaments agreed to be purchased and accepted the title thereto :

Default in  
payment of  
purchase-  
money.

AND WHEREAS default was long since made in payment of the residue of the purchase-money or of the interest accruing due thereon :

Notice of  
forfeiture of  
deposit-money  
and to give up  
possession of  
hereditaments.

NOW we (*names of Vendors*) hereby declare the purchase-money paid under the said Agreement to be forfeited, and we hereby further give to you the said (*name of Purchaser*) Notice that we hereby cancel the said Agreement and declare the same to be at an end and hereby require you to deliver up to us the possession of the hereditaments comprised in the said Agreement, or so much thereof as has not been already duly sold.

AS WITNESS, &c.

## NO. VIII.

### AGREEMENT *by* VENDOR *to pay* DEATH DUTIES.

Parties.

AN AGREEMENT, made, &c., BETWEEN A. B. (hereinafter called the Vendor) of the one part, and C. D. (hereinafter called the Purchaser) of the other part, Supplemental to an Indenture (hereinafter called the Principal Indenture) dated, &c., being a Conveyance of certain parts of the — Estate, in the County of — :

Supplemental  
to conveyance.

Agreement to  
pay duties and  
for indemnity.

WHEREBY the Vendor (as was agreed on the execution of the Principal Indenture) now undertakes that the Vendor or his successors in title [*or* the persons deriving title under him], will duly pay and discharge all estate and other duties payable on the death of his father, the late —, who died on the — day of — (*u*) (being at his death tenant for life in possession

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(*u*) This Precedent can readily be adapted to meet the case where the vendor obtained the property under a voluntary conveyance which was executed within three years of completion, see Fin. (1909-10) Act, 1910, s. 59. In that case recite the voluntary conveyance and say here “all estate and other duties which may become payable in the event of the death of — (*the Donor*) within three years from the date of the execution of the recited Voluntary Conveyance.”

of the said Estate), and that the Vendor and his representatives will at all times hereafter save harmless and keep indemnified the Purchaser, his estate and effects, and the persons deriving title under him, and all and singular the land and hereditaments comprised in the Principal Indenture from and against all proceedings, costs, claims and expenses on account of any omission to pay the said duties or any part thereof or any interest thereon, or in anywise relating thereto, and also will on payment of the said duties forthwith procure and deliver free of expense to the Purchaser or the persons deriving title under him a certificate pursuant to section Eleven of the Finance Act, 1894, of such payment as aforesaid.

AS WITNESS, &c.

## PART III.

EXCHANGES, PARTITIONS, ENFRANCHISEMENT AND  
ENLARGEMENT OF TERM DEEDS.

## SECTION I.

## EXCHANGES.

## PRELIMINARY NOTE.

At common law. EXCHANGES at common law required neither livery of seisin nor a deed, but only the entry of the parties on the land taken by them respectively, and a mutual warranty was implied.

R. P. Act, 1845. Since the 1st October, 1845, an exchange is void unless made by deed and implies no condition at law : R. P. Act, 1845, ss. 3 and 4. As to the conditions formerly implied, see 4 Cru. Dig. tit. XXXII., c. 6, 20.

How effected. Exchanges may be effected by one deed executed in duplicate or by two deeds.

S. L. Acts. A tenant for life, or the persons having the powers of a tenant for life, can make an exchange with or without the payment of equality money : S. L. Act, 1882, s. 3 (iii.); and deal with easements where land is exchanged : S. L. Act, 1890, s. 5. Where easements are to be exchanged apart from land, the transaction should be carried out by cross sales : *Re Brotherton*, 1908, W. N. 56 (C. A.); but see *Re Brucken*, 1903, 1 Ch. 265 ; 72 L. J. Ch. 101. As to raising equality money by mortgage of settled land, see S. L. Act, 1882, ss. 5, 18, 24 (4), 40, 45 (3), and 54. S. L. Act, 1890, s. 12, provides that in exchanges between the tenant for life and the settled property the trustees shall stand in the place of the tenant for life and have his powers.

Trustees. Where trustees hold land upon trust for sale, they can exchange if given express powers or powers by reference to the Settled Land Acts. If they have no such powers, an Order under s. 7 of the S. L. Act, 1884, should be obtained authorising the person entitled to the income of the proceeds of sale to exchange. Where trustees have a power of sale, the tenant for life is the proper person to effect the exchange. As to Vesting Orders, see T. Act, 1893, s. 31.

Lunatics. The Lunacy Act, 1890, s. 120 (b), authorises the committee of the

estate of a lunatic to exchange under an Order in Lunacy. See also S. L. Act, 1882, s. 62 ; Lunacy Act, 1908, s. 1.

The Tithes Acts, 1842, 1846, and 1860, contain provisions enabling the exchange of glebe lands. Ecclesiastical property.

Whether an exchange is effected by one deed executed in duplicate or by two deeds, the stamp on each deed, if no money or a less sum than £100 is paid for equality of exchange, is 10s. Stamps.

If a sum exceeding £100 is paid for equality of exchange, the stamp on the principal or only deed will be the same as on a conveyance on sale for the consideration, and that duty only. If there is more than one deed, the other deed or deeds will have a 10s. stamp : Stamp Act, 1891, s. 73, and Schedule under heading "Exchange or Excambion." If the equality money exceeds £100 and does not exceed £500, the duty is 10s. per cent., but if it exceeds £500 the duty is £1 per cent. : Fin. (1909-10) Act, 1910, s. 73. Where the equality money is between £100 and £500, Form No. 11, Sect. III. of Miscellaneous Forms in Purchase Deeds, *sup.*, should be used.

It is not clear whether an exchange is a "transfer on sale" within the meaning of Fin. (1909-10) Act, 1910, s. 1 (a). In *Re Brotherton*, 1908, W. N. 56 ; 77 L. J. Ch. 373, a distinction was drawn between an exchange and cross sales ; and it is conceived that it may be contended that increment value duty does not attach on an exchange as not being a "transfer on sale," whether equality money is paid or not. Increment value duty.

### *Exchanges and Partitions under the General Inclosure Acts.*

An application for an order of exchange under these Acts may be made to the Board of Agriculture and Fisheries by the following persons, namely : (1) The person in the actual possession or enjoyment, or receipt of the rents and profits, of any such land, except a tenant for life or for years holding under a lease or an agreement for a lease on which a rent of not less than two-thirds of the clear yearly value of the premises shall have been reserved, and except any tenant for years holding under any lease or agreement for a lease, for a term which has not exceeded fourteen years from the commencement thereof, and except any tenant from year to year, or at will or sufferance ; (2) where the land, &c. has been leased, or agreed to be leased, to any person for life or for years by a lease or agreement on which a rent of not less than two-thirds of the clear yearly value of the premises shall have been reserved, or where the land, &c., shall be in the possession of a tenant from year to year, or at will or sufferance, or shall have been leased or agreed to be leased for a term which shall not have exceeded fourteen years from the commencement thereof, then the person for the time being entitled to the land, &c., in reversion By whom application for exchange may be made.

immediately expectant on the term created or agreed to be created by the lease or agreement for a lease, or subject to the tenancy from year to year or at will or sufferance; (3) where the land, &c., has been leased, or agreed to be leased, to any person for life or years by any lease or agreement for a lease on which a rent of less than two-thirds of the clear yearly value shall have been reserved, and of which the term shall have exceeded fourteen years from the commencement thereof, the person for the time being in the actual receipt of the rent reserved upon such lease or agreement for a lease jointly with the person liable to the payment of the rent; and (4) where any person shall be in possession or enjoyment, or receipt of the rents and profits of the land, &c., under any writ of execution, or as a receiver under any order of any Court of equity, the person who, but for such writ or order, would have been in such possession, &c., jointly with the person in possession, &c., by virtue of such writ or order: Inclosure Act, 1845 (8 & 9 Vict. c. 118), ss. 16, 147; Inclosure Act, 1848 (11 & 12 Vict. c. 99), s. 13.

Notices and  
advertisements before  
making order.

Before the order is confirmed, notice has to be given by advertisement in two successive weeks, and one month must have elapsed from the publication of the last of such advertisements, during which month any person entitled to any estate in, or charge on, the land may give notice of dissent, and the exchange will not be confirmed unless the dissent is withdrawn: Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 150; Commons Act, 1899.

Provisions as  
to exchanges  
extended to  
partitions.

The above provisions as to exchanges are extended to partitions; but on an application for a partition, a lessee, being a person jointly interested, need not concur, and the provision as to notice of dissent does not apply where the application for a partition is made by two-thirds in value of the persons interested in the subject-matter of the partition: Inclosure Act, 1848 (11 & 12 Vict. c. 99), s. 13; Inclosure Act, 1859 (22 & 23 Vict. c. 43), ss. 10, 11. The application must be made by persons interested in the land: *Jacomb v. Turner*, 1892, 1 Q. B. 47.

Mines may be  
excepted.

Exchanges may be made with an exception and reservation of mines and minerals and rights and easements for working them: Inclosure Act, 1847 (10 & 11 Vict. c. 111), s. 4.

Exchanges and  
partitions of  
easements, &c.

Exchanges and partitions may be made of rights of common, rights of fishing, manorial and other rights, and all easements over any land, and all quit rents, chief rents, heriots, tithes and rentcharges for any other of such easements, rights and things, and whether of the same or a like or different nature, or for land: Inclosure Act, 1849 (12 & 13 Vict. c. 83), s. 7.

Application  
may be made  
by two-thirds  
in value of  
persons  
interested.

Where two or more persons are interested jointly, severally, as a class or in common, the application of two-thirds in value of the persons so interested will be deemed the application of all persons interested: *ib.*

Any person interested in several subject-matters of exchange held

under separate titles, or for distinct and separate interests, or subject to separate charges or incumbrances, may effect exchanges of such several subject-matters of exchange in such and the same manner as if different persons had been interested therein : *ib.*, s. 11.

Any person interested in any land or other subject-matter of partition in undivided shares held under separate titles, or for distinct and separate interests, or subject to separate charges, may effect a partition of the same in such and the same manner as if different persons had been interested therein : Inclosure Act, 1852 (15 & 16 Vict. c. 79), s. 31.

A person holding lands or shares of lands by different titles may exchange or make partition.

Persons interested in undivided parts or shares of any land or other subject-matter of partition, and also interested in the entirety of land or other subject-matter of exchange, may effect a partition and exchange at one and the same time : *ib.*, s. 32.

Where any land has been leased for a term which shall have exceeded one hundred years from the commencement thereof, and it shall be shown to the satisfaction of the board that no rent or acknowledgment has been paid or given for twenty years, or that the person entitled to the rent reserved upon such lease cannot upon reasonable inquiry be ascertained, the person in the actual possession of the land or in the actual receipt of the rents and profits as owner of such term is to be deemed the person interested within the meaning of the Acts : Inclosure Act, 1854 (17 & 18 Vict. c. 97), s. 4.

Termor, when may apply.

Orders may be made on the application of parties in possession under any agreement for an exchange or partition : *ib.*, s. 5.

Person in possession under agreement.

Railway and other public companies are persons interested within the meaning of the Acts : Inclosure Act, 1857 (20 & 21 Vict. c. 31), s. 4.

Railway companies.

On exchanges or partitions inequality of value may be compensated by a perpetual rentcharge, where the deficiency in value does not exceed one eighth part of the whole value : *ib.*, ss. 6, 7, 8.

Inequality of value, how compensated.

Lands taken upon any exchange or allotted in partition under the Acts enure to the same uses and subject to the same conditions, charges and incumbrances, as the land given in exchange or the undivided share in respect whereof the land is allotted would have stood limited or been subject to if the order for exchange or partition had not been made : Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 147; Inclosure Act, 1848 (11 & 12 Vict. c. 99), s. 13.

Land taken in exchange or partition to go to same uses as land given in exchange, &c.

On an exchange or partition under the General Inclosure Acts an investigation of title is unnecessary, because each party will hold the lands taken by him by the same title as that by which he held before the land given by him.

No investigation of title necessary.

## No. I.

AGREEMENT *for an* EXCHANGE.

Parties.

AN AGREEMENT, made the — day of —, BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

Parties agree to exchange.

1. THE said A. B., being seised (*a*) or claiming to be seised in fee simple of [*or having power under the Settled Land Acts, 1882 to 1890, to exchange*] the hereditaments comprised in the first Schedule hereto, and the said C. D., being seised or claiming to be seised in fee simple of [*or having power, &c.*] the hereditaments comprised in the second Schedule hereto, hereby agree to exchange the same [*and the said C. D. agrees to pay to the said A. B. the sum of £—— by way of equality of exchange*].

Completion of exchange.

2. THE exchange shall be completed [*and the said sum of £—— for equality of exchange shall be paid (b)*] on the — day of — next, and from that day each party shall be entitled to the possession or receipt of the rents and profits of the hereditaments to be taken by him, the outgoings up to that time being cleared by the present owner [*and if from any cause whatever the exchange shall not be completed on that day the said C. D. shall pay interest on the said sum of £—— at the rate of £4 per cent. per annum from that day until the completion of the exchange*].

Title.

3. THE title to the hereditaments comprised in the first Schedule hereto shall commence with, &c.

(*Other special conditions, if necessary.*)

4. THE title to the hereditaments comprised in the second Schedule hereto shall commence, &c.

(*Other special conditions, if necessary; see List of Forms of Special Conditions, p. 137, sup.*)

Objections and requisitions.

5. ALL objections and requisitions by either party to or on the title or evidence of title or the abstract of title to the property to be taken by him or this Agreement shall be stated in writing and sent to the solicitors of the other party within — days from the delivery of the abstract, and subject thereto the title shall be deemed accepted, and all objections and requisitions not made within that time shall be deemed to be waived, and an

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(*a*) Sometimes recitals of the interests claimed by the parties are inserted.

(*b*) Sometimes arrangements are made for allowing the equality money to be left on mortgage.

abstract, though in fact imperfect, shall be deemed perfect except for the purpose of any further objections or requisitions which could not be taken or made on the information therein contained: And an answer to any objection or requisition shall be replied to in writing within ten days after the delivery thereof, and if not so replied to shall be considered satisfactory and time shall be deemed in all respects as of the essence of this clause: And if either party shall make any objection or requisition in respect of the title or any matter relating or incidental to the exchange, which the other party shall be unable or on the ground of expense unwilling to remove or comply with, or if any question shall arise as to the deeds of exchange, and the objecting party shall not withdraw such objection or requisition or waive the question within seven days after being required so to do, the party to whom the objection or requisition shall be made may by notice in writing delivered to the other party or his solicitors (notwithstanding any intermediate negotiation or litigation), rescind this Agreement, in which case the abstract of title and all other papers which shall have been delivered by either party to the other shall be mutually returned, and neither party shall have any claim against the other for costs, compensation, or otherwise.

6. THE Deed of Exchange shall be prepared by the said A. B., and the engrossment thereof shall be delivered to the solicitors of the said C. D. at least ten days before the date fixed for completion for execution by the said C. D. and all other parties (if any) necessary for conveying the hereditaments to be conveyed by him, and for enabling his solicitors to engross the duplicate, which shall within two days be delivered to the solicitors of the said A. B. for execution by him and all other parties (if any) necessary for conveying the hereditaments to be conveyed by him. Completion shall be effected by an exchange of the original and duplicate, and the said A. B. shall free of cost produce the original duly stamped, to enable the said C. D. to stamp the duplicate (c). [The costs of and incidental to the preparation, approval, stamping, and execution of the original and duplicate shall be borne by the parties hereto in equal shares.] The draft of the said Deed of Exchange for perusal and approval on behalf of the said C. D. and other necessary parties

Preparation  
of deed of  
exchange.

(c) If equality money is paid, the *ad valorem* stamp should be on the deed retained by the person who pays the money. This deed should be the original, a denoting stamp should be placed on the duplicate.

Denoting  
stamp.

as aforesaid shall be left at the office of his solicitors at least seven days before the delivery of the engrossment [and time shall be of the essence of this clause].

Mutual conveyances on completion (d).

[6A. On the day fixed for completion the transaction shall be carried out by mutual conveyances of even date, each conveyance to be prepared by and at the expense of the party to whom the same is made. And each of the parties shall acknowledge the right of the other to production of the conveyance retained by him.]

Statutory provisions to apply.

7. THE provisions of the Vendor and Purchaser Act, 1874, and of the Conveyancing Acts, 1881, 1882, relating to contracts for sale shall apply to this Agreement in like manner as if the same were an agreement for mutual sales.

AS WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

Particulars of hereditaments to be conveyed by the said A. B.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Particulars of hereditaments to be conveyed by the said C. D.

## No. II.

AGREEMENT *for* EXCHANGE *between* a TENANT *for* LIFE and TRUSTEES *for* the purposes of the SETTLED LAND ACTS, *acting on behalf of* an INFANT TENANT *for* LIFE, *including provisions as to* INCUMBRANCES and DEATH DUTIES (c).

Parties.

AN AGREEMENT made, &c., BETWEEN A. B., of, &c. (hereinafter called the Tenant for Life), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Trustees), of the other part :

Agreement to be carried out under S. L. Acts.

1. This Agreement is entered into by the Tenant for Life as tenant for life of the estates known as the — Estates,

(d) It is sometimes (*e.g.*, where the recitals are likely to be lengthy) more convenient to take cross conveyances in place of a deed of exchange. Clause 6A is alternative to clause 6. In the case of an exchange of easements under the S. L. Acts where no land is exchanged the transaction must be effected by cross sales: see *Re Brotherton*, 1908, W. N. 56; and *cf. Re Bracken*, 1903, 1 Ch. 265; 72 L. J. Ch. 101.

(c) This Precedent is somewhat complicated, but is inserted as a suggestion in dealing with various incumbrances under the S. L. Acts. The S. L. Act, 1882, s. 3 (iii.), authorises exchanges,

situated in the County of —, under a Settlement dated the — day of —, and made between, &c., and by the Trustees as the trustees for the purposes of the Settled Land Acts, 1882 to 1890, of the Will dated the — day of —, and proved on the — day of —, of the late X. Y. (who died on the — day of —). The Trustees are acting on behalf of G. H., an infant tenant for life of the hereditaments in the County of —, mentioned in the second Schedule hereto, who was born on the — day of —, and this Agreement shall be carried into effect by all the parties hereto under the powers of the Settled Land Acts, 1882 to 1890.

2. THE Tenant for Life shall convey ALL THOSE, &c., all of which hereditaments are more particularly described in the first Schedule hereto and are delineated on the plan No. 1 hereto, and are thereon edged red, in consideration and exchange for the hereditaments mentioned in clause 4 of this Agreement and of the sum of £—, by way of equality for exchange to be paid by the Trustees to the Trustees of the said Settlement for the purposes of the said Acts.

Tenant for Life to convey property in first Schedule.

3. THE Tenant for Life shall either convey the hereditaments mentioned in clause 2 hereof unto and TO THE USE in fee simple of the mortgagees, who have a charge on the hereditaments mentioned in clause 4 hereof, by way of substitution pursuant to sub-section 4 of section twenty-four of the Settled Land Act, 1882, and so that the equity of redemption shall become subject to the limitations of the said Will in place of the hereditaments mentioned in clause 4 hereof, or in such other manner as the Trustees may in accordance with the Settled Land Acts, 1882 to 1890, direct.

Manner in which Tenant for Life to convey for shifting an incumbrance.

4. THE Trustees and all other necessary parties (if any) shall convey ALL THOSE hereditaments known as, &c., and more particularly described in the second Schedule hereto and delineated on the plan No. 2 hereto, and thereon edged blue, TO THE USES of the said Settlement in accordance with sub-section 2 of section twenty-four of the Settled Land Act, 1882, or in accordance with sub-section 4 of that section, as the Tenant for Life may direct.

Trustees to convey property in second Schedule to uses of Settlement.

5. THE abstract of title to the property of the Tenant for Life shall commence with an Indenture of Disentail dated the — day of —, And the abstract of title to the property of the Trustees shall commence with a Voluntary Settlement dated the — day of —, And the prior titles shall not be required,

Commencement of titles.

inquired into, or objected to, whether the documents relating to the same shall appear to be respectively in the possession of the Tenant for Life or the Trustees or not, and no objection shall be taken on the ground that the said Settlement of — was originally voluntary (*add any necessary conditions as to title, stamps, &c.* See *Lists of Special Conditions*, p. 137, *sup.*).

Identity.

6. THE Tenant for Life and the Trustees shall not be respectively entitled to require any further or other evidence of the identity of the property than such (if any) as is afforded by comparison of the descriptions in the abstracted documents respectively, and (if they shall respectively require it) a statutory declaration to be made at the expense of the person or persons requiring it that the property has been held by the Tenant for Life and his predecessors in title, or by the Trustees and their predecessors in title, as the case may be, for a period of twelve years and upwards in accordance with the respective titles shown.

Incumbrances affecting Tenant for Life's property and manner in which they are to be dealt with.

7. THE property of the Tenant for Life (with other family property) is subject to the following family charges and incumbrances, that is to say :—

(i.) A yearly jointure rentcharge of £—, limited by a Settlement dated the — day of — to Lady S. for the residue of her life, with a term and the usual remedies for recovering the same. The said jointress shall concur in the conveyance to release the land from this jointure rentcharge, and a memorandum of such release shall be indorsed on the Settlement of — instead of joining the Trustees of the jointure term. The Tenant for Life shall give to the Trustees a separate undertaking to keep the land conveyed to them indemnified against all claims in respect of death duties which will become payable on the death of the said jointress, and the Trustees shall not require those duties to be commuted.

(ii.) A yearly jointure rentcharge of £— payable to J. B. and a term of — years for raising the sum of £— for the benefit of the younger children of R. B. (the father of the Tenant for Life), but inasmuch as the said rentcharge and term of — years were created by the Settlement of —, under which the Tenant for Life is now entitled in possession, and no money has been raised under section forty-four of the Conveyancing and Law of Property Act, 1881, by mortgage or sale for payment of the said rentcharge, nor has the said term of — years been conveyed for raising any money, the same will be over-reached

under section twenty of the Settled Land Act, 1882, and the Trustees shall not raise any objection on account thereof.

(iii.) A mortgage in fee simple to the ——— Society executed under a power contained in the said Settlement of ———. The said Society shall join to convey the legal estate and release the hereditaments mentioned in the first Schedule hereto from the principal sum and interest remaining owing to them.

(iv.) The life estate of the Tenant for Life is also incumbered. The incumbrancer shall, pursuant to section fifty of the Settled Land Act, 1882, by a separate writing consent to the Vendor exercising his statutory powers for giving effect to this Agreement.

8. THE property of the Trustees is, with other hereditaments, subject to the following incumbrances (that is to say):—

Incumbrances affecting Trustees' property and manner in which they are to be dealt with.

(i.) A mortgage in fee simple to certain individuals. These mortgagees shall join to convey the legal estate and release the hereditaments mentioned in the second Schedule hereto from the principal sum and interest remaining owing.

(ii.) Certain instalments of death duties which on the ——— day of ——— became payable on the death of a former tenant for life under a Settlement prior to the Will under which the said G. H. is at present Tenant for Life. The Tenant for Life shall make no objection in respect thereof nor require the said duties to be paid before completion, but shall accept a separate undertaking by ——— to keep the hereditaments mentioned in the second Schedule hereto indemnified against all claims in respect of the said duties, and on the payment of the final instalment to produce the proper evidence of the discharge of the said duties.

9. ALL objections and requisitions (*continue as in clause 5 of last Precedent*). Objections and requisitions.

10. THE said exchange, &c. (*as in clause 2 of last Precedent*). Completion.

11. ON the day, &c. (*as in clause 6A of last Precedent*). Mutual conveyances.

12. The Trustees shall not require any covenant for title by the Tenant for Life except the statutory covenants implied by his conveying, As Beneficial Owner, with a proviso (*continue Spec. Condit., Form No. 115, p. 188, sup.*). Covenants by Tenant for Life.

13. The Trustees shall be required to give only the statutory covenants implied by reason of their being expressed to convey as Trustees (*add any conditions required as to documents or compensation*). Covenants by Trustees.

14. THE provisions of, &c. (*as in clause 7 of last Precedent*). Statutory provisions to apply.

AS WITNESS, &c.

(*Schedules as in last Precedent.*)

## No. III.

EXCHANGE *by* SEPARATE MUTUAL CONVEYANCES.

|  |  |
|--|--|
| Parties.   | THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part :  |
| Recital of titles and of agreement for exchange. | WHEREAS the said A. B., being seised in fee simple in possession free from incumbrances of the hereditaments mentioned in the first Schedule hereto, and the said C. D., being seised in fee simple in possession free from incumbrances of the hereditaments mentioned in the second Schedule hereto, have agreed to exchange the same [and the said C. D. has agreed to pay the sum of £—— for equality of exchange] : |
| Conveyance of even date.                         | AND WHEREAS, in part performance of the said agreement, by an Indenture bearing even date with these presents, and made between the said C. D. of the one part, and the said A. B. of the other part, the hereditaments mentioned in the second Schedule hereto have been conveyed by the said C. D. to the said A. B. in fee simple :   |
| Conveyance of land in first Schedule.            | NOW THIS INDENTURE WITNESSETH that in further pursuance of the aforesaid agreement and in consideration of the conveyance made by the said Indenture of even date herewith [and of the sum of £—— now paid by the said C. D. to the said A. B. (the receipt whereof the said A. B. hereby acknowledges)], the said A. B., As Beneficial Owner hereby conveys unto the said C. D.   |
| Parcels.   | ALL THOSE pieces of land situated at ——, in the County of ——, containing in the whole —a. —r. —p. or thereabouts, and more particularly described in the first Schedule hereto and delineated on the plan drawn on these presents and thereon coloured ——,   |
| Habendum.  | To HOLD unto and To THE USE of the said C. D. in fee simple. ( <i>Acknowledgment, &amp;c., as to documents, including the Conveyance of even date, Form No. 6, Sect. III., Purchase Deeds, sup.</i> )<br>IN WITNESS, &c.<br>( <i>Schedules.</i> )  |

## No. IV.

EXCHANGE *by ONE and the same* DEED (*f*).

THIS INDENTURE, made, &c. (*parties and first recital as in Parties. last Precedent*) :

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN consideration of the Conveyance by the said C. D. herein- Conveyance  
after contained [and of the sum of £—— now paid by the said  
C. D. to the said A. B. for equality of exchange (the receipt  
whereof the said A. B. hereby acknowledges)], the said A. B.,  
As Beneficial Owner, hereby conveys unto the said C. D.

ALL, &c. (*as in last Precedent, referring to first Schedule*), Parcels.

To HOLD unto and To THE USE of the said C. D. in fee simple. Habendum.

2. THE said A. B., &c. (*acknowledgment as to documents, Form No. 6, Sect. III., Purchase Deeds, sup., if required*).

3. IN consideration of the Conveyance by the said A. B. herein- Conveyance.  
before contained, the said C. D., As Beneficial Owner, hereby  
conveys unto the said A. B.

ALL, &c. (*referring to second Schedule*), Parcels.

To HOLD unto and To THE USE of the said A. B. in fee simple.

4. (*Acknowledgment by C. D. as to documents, Form No. 6, Sect. III., Purchase Deeds, sup., if required*.)

IN WITNESS, &c.

(*Schedules.*)

## No. V.

DEED OF EXCHANGE *between a* TENANT FOR LIFE *and an*  
OWNER IN FEE SIMPLE *under the Powers of the S. L.*  
*ACTS (g).*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. Parties.  
(*Tenant for Life*), of the 1st part, C. D., of, &c., and E. F., of, &c.

(*f*) This will be executed in duplicate.

(*g*) The S. L. Act, 1882, s. 3 (iii.), enables tenants for life and such other limited owners as, under the Act, have the powers of a tenant for life to make an exchange of settled land, including an exchange in consideration of money paid for equality of exchange. The equality money, if payable by the trustees, may be raised on mortgage: *ib.*, s. 18.

(hereinafter called the Trustees), of the 2nd part, and X. Y. of, &c. (*Owner in Fee Simple*), of the 3rd part :

Recital of  
Settlement.

WHEREAS under an Indenture of Settlement dated, &c., and made, &c., the hereditaments mentioned in the first Schedule hereto (with other hereditaments) now stand limited to uses under which the said A. B. is Tenant for Life in possession and the Trustees are the present Trustees of the said Settlement for the purposes of the Settled Land Acts, 1882 to 1890 :

Seisin of  
owner.

AND WHEREAS the said X. Y. is seised in fee simple in possession free from incumbrances of the hereditaments mentioned in the second Schedule hereto :

Agreement for  
exchange.

AND WHEREAS the said A. B. and X. Y. have agreed that such exchange shall be made as is hereinafter expressed, and that the said X. Y. shall pay the sum of £—— for equality of exchange to the Trustees as such Trustees as aforesaid.

NOW THIS INDENTURE WITNESSETH as follows :—

Tenant for Life  
conveys here-  
ditaments in  
first Schedule.

1. IN pursuance of the said agreement and in consideration of the Conveyance by the said X. Y. hereinafter contained, and of the sum of £—— now paid by the said X. Y. by the direction of the said A. B. to the Trustees as such Trustees as aforesaid (the receipt whereof they hereby acknowledge), the said A. B., in exercise of the powers for this purpose vested in him by the Settled Land Acts, 1882 to 1890, and of all other powers (if any) him enabling, and As Beneficial Owner, hereby conveys unto the said X. Y.

Parcels.

ALL, &c. (*referring to first Schedule*).

Habendum.

To HOLD under and To THE USE of the said X. Y. in fee simple, discharged from all the limitations, powers and provisions of the recited Settlement and from all estates, interests and charges subsisting or to arise thereunder, the premises hereinbefore conveyed to be in exchange for the hereditaments conveyed by clause 4 hereof.

2. (*Proviso qualifying statutory covenants for title, Form No. 1, Sect. III., Purchase Deeds, sup.*)

3. (*Acknowledgment, &c., by A. B. as to documents, including the Settlement, Form No. 6, Sect. III., Purchase Deeds, sup.*)

Conveyance  
of land in  
second  
Schedule.

4. IN further pursuance of the said agreement and in consideration of the Conveyance by the said A. B. hereinbefore

contained, the said X. Y., As Beneficial Owner, hereby conveys Parcels.  
unto the said A. B.

ALL, &c. (*referring to second schedule*),

To HOLD unto the said A. B. in fee simple, To THE USES, Upon Habendum  
to uses of  
settlement.  
the trusts, and subject to the powers and provisions which under  
the recited Settlement or by reason of the exercise of any power  
of charging therein contained are now subsisting or capable of  
taking effect with respect to the freehold hereditaments now  
remaining subject to that Settlement, but not so as to increase or  
multiply charges or powers of charging, and so that the premises  
conveyed by this clause shall be in exchange for the heredita-  
ments conveyed by clause 1 hereof.

5. (*Acknowledgment, &c., by X. Y. to A. B. as to documents,  
Form No. 6, Sect. III., Purchase Deeds, sup., if required (h).)*)

IN WITNESS, &c.

(*Schedules.*)

## SECTION II.

### PARTITIONS.

#### PRELIMINARY NOTE.

A PARTITION is where two or more parties, seised or possessed of the Partition at  
common law.  
same land as joint tenants, co-parceners, or tenants in common, agree  
to divide the land between them in severalty, each taking a distinct  
part. At common law, a warranty of title was incident to a partition as  
well as to an exchange. Since the 1st October, 1845, a partition is void Partitions  
now imply no  
warranty.  
unless made by deed, and implies no condition at law: R. P. Act, 1845,  
ss. 3, 4.

The S. L. Act, 1882, s. 3 (iv.), enables tenants for life and such other Partitions  
under S. L.  
Acts.  
limited owners as, under the Act, have the powers of a tenant for  
life, to concur in making partitions, including a partition in considera-  
tion of money paid for equality of partition. As to raising money for  
equality of partition, see S. L. Act, 1882, ss. 5, 18, 24 (4), 40, 45 (3).  
The S. L. Act, 1890, s. 12, provides that in partitions where an  
undivided share is settled and another share is vested in the tenant  
for life the trustees shall stand in the place of the tenant for life and  
have his powers.

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(h) The acknowledgment and undertaking should be given to the grantee  
to uses; the benefit will then run with the land.

- Trustees. A power of sale and exchange authorises trustees to effect a partition : *Re Frith and Osborne* (1876), 3 Ch. D. 618 ; 45 L. J. Ch. 780, but a mere power to sell does not : Lewin, 11th ed., 499. Trustees holding land upon trust for sale are the proper persons to partition if they are given express powers or powers by reference to the S. L. Acts. If they have no such powers, an order under s. 7 of the S. L. Act, 1884, should be obtained authorising the person entitled to the income of the proceeds of sale to partition. Where the trustees have a power of sale the tenant for life is the proper person to partition. As to Vesting Orders, see T. Act, 1893, s. 31.
- Lunatics. The Lunacy Act, 1890, s. 120 (b), authorises the committee of the estate of a lunatic to effect a partition under an Order in Lunacy, see also S. L. Act, 1882, s. 62 ; Lunacy Act, 1908, s. 1.
- Partition by the Court. A partition may be ordered by the Chancery Division in an action instituted by one or more of the persons interested ; and where, in the opinion of the Court, a sale would be more beneficial than a division, the Court may, on the request of any of the parties, direct a sale, see 31 Hen. 8, c. 1 ; 32 Hen. 8, c. 32, and Partition Acts, 1868 and 1876 ; also *Mason v. Keays* (1898), 78 L. T. 33. The order for sale operates as a conversion of the share of a person *sui juris* as from the date of the order : *Re Dodson*, 1908, 2 Ch. 638 ; 77 L. J. Ch. 830.
- In what cases money expended by one of several joint owners can be charged against entirety. If a joint tenant or tenant in common voluntarily expends money in repairs or improvements of the property, he has no remedy against his co-tenant for contribution, so long as the property is held in common. But, if an action for partition is instituted, and it appears that the value has been increased by the expenditure, one party cannot take the increase in value without making an allowance for what has been expended in producing that increase : *Kenrick v. Mountstephen* (1899), 48 W. R. 141. Where property is sold by a paramount mortgagee, the surplus proceeds of sale are dealt with in a similar manner between the tenants in common of the equity of redemption, one of whom has spent money in improvements : *Leigh v. Dickeson* (1884), 15 Q. B. D. 60 ; 54 L. J. Q. B. 18 ; *Re Jones*, 1893, 2 Ch. 461 ; 62 L. J. Ch. 996 ; *Re Cook's Mortgage*, 1896, 1 Ch. 923 ; 65 L. J. Ch. 654. If a joint tenant, who has spent money in improvements, dies, his representatives have a lien in equity against the survivor : *Lake v. Gibson* (1729), 1 Eq. Ca. Abr. 294, pl. 3.
- Partition under Inclosure Acts. As to partitions under the Inclosure Acts, see Preliminary Note to Exchanges, p. 661, *sup.*
- Stamps. The note as to stamps in the Preliminary Note on Exchanges, *sup.*, applies to partitions, substituting the word "partition" for "exchange."
- Costs in partition action. The Court has a discretion as to costs in a partition action, see *Ball v. Kemp-Welch* (1880), 14 Ch. D. 512 ; 49 L. J. Ch. 528 ; *Richardson v. Feary* (1888), 39 Ch. D. 45 ; 57 L. J. Ch. 1049 ; *Belcher v.*

*Williams* (1890), 45 Ch. D. 510; *Catton v. Banks*, 1893, 2 Ch. 221; 62 L. J. Ch. 690; *Ancell v. Rolfe* (1896), W. N. 9; *Re Vase* (1901), 84 L. T. 761; *Hills v. Archer* (1904), 91 L. T. 166. *Re Vase* dissented from *Belcher v. Williams* and followed *Catton v. Banks* and *Ancell v. Rolfe*, but not on the question of discretion.

Where parties are equally interested in a partition action, the plaintiff is given the custody of the documents, but where they are not, the documents are usually given to the person who has the larger interest: *Elton v. E.* (1860), 27 Beav. 632. Documents.

A partition is not a sale: *Henniker v. H.* (1853), 22 L. J. Q. B. 94; hence it is conceived that, whether equality money is paid or not, increment value duty will not attach on a partition under Fin. (1909-10) Act, 1910, s. 1 (a). Increment value duty.

## No. I.

### AGREEMENT *between two* TENANTS IN COMMON *for* PARTITION.

AN AGREEMENT, made the —— day of ——, 19——, BETWEEN Parties.  
A. B., of, &c. (*one tenant in common*), of the one part, and C. D., of, &c. (*other tenant in common*), of the other part.

1. THE parties hereto, being seised of the hereditaments described in the Schedules hereto as tenants in common in fee simple, hereby agree to make partition of the same on the terms that the said A. B. shall take in severalty the hereditaments described in the first Schedule and the said C. D. shall take in severalty the hereditaments described in the second Schedule, and the said C. D. shall pay to the said A. B. the sum of £—— for equality of partition [*or* And the said C. D. shall pay to the said A. B. for equality of partition such sum as shall be determined and awarded by E. F., of, &c., to whom the same is referred, and the provisions of the Arbitration Act, 1889, shall apply]. Tenants in Common agree to make partition.  
[Sum to be paid for equality of partition.]

2. THE partition shall take effect as from the —— day of —— next, and on that day mutual conveyances of even date shall be executed for completing the same, and the said sum of £—— shall be paid, and each of the parties shall give to the other an acknowledgment and undertaking for production and safe custody of the conveyance retained by him. If the said sum shall not be paid on that day, interest thereon shall be paid as from that day at the rate of £4 per cent. per annum. Date of completion.

Preparation of conveyance.      3. EACH conveyance shall be prepared by the party to whom it is made, and the draft thereof shall be submitted to the other party for approval at least seven days before the delivery of the engrossment.

As to title deeds.      4. THE documents of title which relate as well to the hereditaments mentioned in the first Schedule hereto, as also to the hereditaments mentioned in the second Schedule hereto, shall be retained by the said A. B., and he shall give to the said C. D. an acknowledgment of his right to production and delivery of copies thereof, and an undertaking for their safe custody.

Costs.      5. ALL the costs and expenses of and incidental to this Agreement, and the partition to be made in pursuance hereof, shall be paid by the said A. B. and C. D. in equal shares.

AS WITNESS, &c.

(Schedules.)

No. II.

DEED of PARTITION of FREEHOLDS by Three CO-HEIRESSES, *one of whom pays a SUM by way of Equality of PARTITION (k).*

Parties.      THIS INDENTURE, made the —— day of ——, 19—, BETWEEN A. B., of, &c., spinster (*one daughter and co-heiress*), of the 1st part, C. B., of, &c., spinster (*another daughter and co-heiress*), of the 2nd part, E. B., of, &c., spinster (*third daughter and co-heiress*), of the 3rd part, and G. H., of, &c. (*grantee to uses*), of the 4th part :

Recital of seisin of father of co-heiresses and his death intestate, &c.      WHEREAS M. B., being at his death seised in fee simple in possession free from incumbrances of the hereditaments respectively described in the first, second, and third Schedules hereto, having acquired the same by purchase in the year 18—, died intestate on the —— day of —— (*l*), leaving the parties hereto of

Execution of partition deeds.      (*k*) A partition deed should be executed in as many parts as there are co-owners. Thus, in the above case, it should be executed in triplicate, and every part should be executed by all the parties, so as to be an original deed, and, as such, primary evidence. A counterpart, as distinguished from a duplicate or a triplicate original, is where each part is executed by one party only, and is primary evidence against that party, and secondary evidence against the other, see Taylor on Evidence, 10th ed., 327—8.

Death of intestate after 1897.      (*l*) If the intestate died after 1897, then the letters of administration must be recited, also the payment of debts and duties, and the administrators must join to convey : L. T. Act, 1897, Part I.

the first three parts his only children and co-heiresses-at-law and without leaving any widow him surviving :

AND WHEREAS the parties hereto of the first three parts have agreed to partition the hereditaments described in the several Schedules hereto, so that the entirety of the hereditaments described in the first Schedule should be taken in severalty by the said A. B., and the entirety of the hereditaments described in the second Schedule should be taken in severalty by the said C. B., and the entirety of the hereditaments described in the third Schedule should be taken in severalty by the said E. B., And that the said E. B. should pay for equality of partition the sum of £200 to the said A. B. and C. B. in equal shares :

Agreement  
for partition.

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £200 now paid by the said E. B. to the said A. B. and C. B. in equal shares (the receipt of which sums of £100 and £100 the said A. B. and C. B. hereby respectively acknowledge), and of the premises each of them, the said A. B., C. B., and E. B., as to her undivided third share, and As Beneficial Owner, hereby conveys unto the said G. H.

Conveyance  
to uses.

ALL the hereditaments respectively described in the first, second, and third Schedules hereto and respectively edged red, green, and purple on the plan drawn on these presents,

Parcels.

To HOLD unto the said G. H. in fee simple,

To THE USES following (that is to say):—

Habendum.

(1) AS to the hereditaments mentioned in the first Schedule hereto, To THE USE of the said A. B. in fee simple ;

(2) AS to the hereditaments mentioned in the second Schedule hereto, To THE USE of the said C. B. in fee simple ;

(3) AND AS to the hereditaments mentioned in the third Schedule hereto, To THE USE of the said E. B. in fee simple.

2. INASMUCH AS the documents mentioned in the fourth Schedule hereto relate to all the hereditaments hereby conveyed, and it has been agreed that the same shall be retained in the custody of the said A. B., Now the said A. B. hereby acknowledges the right of the said C. B. and E. B. and of each of them, &c. (*acknowledgment and undertaking as to documents, Form No. 6, Sect. III., Purchase Deeds, sup.*).

Acknowledg-  
ment, &c., as to  
deeds.

IN WITNESS, &c.

(Schedules.)

## No. III.

PARTITION *of* FREEHOLDS *between a* TENANT FOR LIFE  
*under the SETTLED LAND ACT, 1882 (m), and an OWNER*  
*in FEE SIMPLE, a RIGHT to DOWER being released and*  
*a LEGAL ESTATE got in.*

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., the wife of L. B., of, &c. (*tenant for life of one moiety*), of the 1st part, C. D., of, &c., and E. F., of, &c. (hereinafter called the Trustees), of the 2nd part, G. O., of, &c. (*owner of the other moiety*), of the 3rd part, H. O., of, &c. (*widow and administratrix*), of the 4th part, and J. K., of, &c. (*grantee to uses*), of the 5th part :

Recite conveyance of hereditaments in first and second schedules to N. O. (*n*). WHEREAS by an Indenture dated, &c., and made between L. M. of the one part, and N. O. of the other part, for the consideration therein mentioned, the freehold hereditaments described in the first and second Schedules hereto were conveyed by the said L. M. unto and to the use of the said N. O. in fee simple :

Death of N. O. intestate. A. B. and G. O. only children. AND WHEREAS the said N. O. died on the — day of —, 19—, intestate, leaving the said A. B. (then A. O., Spinster) and G. O. his only children and co-heiresses-at-law (who were respectively born on the — day of — and the — day of —) and his widow the said H. O. :

Letters of administration to widow. AND WHEREAS on the — day of — Letters of Administration to the estate of the said N. O. were granted by the — Probate Registry to the said H. O. (*o*) :

Payment of funeral and administration expenses. AND WHEREAS the said H. O., as such administratrix as aforesaid, has paid all the funeral and administration expenses of the said N. O. and the estate or other duty attributable to the hereditaments mentioned in the first and second Schedules

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(*m*) See s. 3 (iv.). The deed should be executed in duplicate. If required, capital money can be paid for equality : S. L. Act, 1882, s. 21 (iv.).

(*n*) This shows that the intestate took by purchase as opposed to descent.

Method of giving effect to widow's charge under Intestates Estates Act, 1890. (*o*) The legal estate passes to her under L. T. Act, 1897, Part I., as administratrix, her husband having died after 1897; her only beneficial interest is her right to dower; as there were issue, she takes no interest under the Intestates Estates Act, 1890. Where a widow becomes entitled to a charge of £500 under that Act the best method of dealing with the proportion charged on the real estate is to limit a term to trustees on trust to raise and pay her the proper sum, with interest from the date of death at 4 per cent.

hereto which became payable on the death of the said N. O., and the said H. O. has also received one third of the net rents and profits of the said hereditaments in respect of her right to dower in the same :

AND WHEREAS by an Indenture (hereinafter called the Settlement) dated the — day of —, 19—, and made between L. B. of the 1st part, the said A. B. (then A. O., Spinster) of the 2nd part, and the Trustees of the 3rd part (being a Settlement made in consideration of the marriage shortly afterwards solemnised between the said L. B. and A. B.), the undivided moiety of the said A. B. in the hereditaments mentioned in the first and second Schedules hereto was, subject to the right to dower of the said H. O. (with other hereditaments), limited after the said marriage TO THE USE of the said A. B. (*p*) for her life with remainders over; and by the Settlement the Trustees were appointed to be trustees thereof for all the purposes of the Settled Land Acts, 1882 to 1890 :

Settlement of  
A. B.'s share.

AND WHEREAS the said A. B. and G. O. have agreed to partition the hereditaments mentioned in the first and second Schedules hereto, and on the treaty for such partition it was agreed that the hereditaments mentioned in the first Schedule hereto should be taken in severalty by the said G. O. and that the hereditaments mentioned in the second Schedule hereto should be taken in severalty by the said A. B. and her successors in title, and that the sum of £100 should be paid by the said G. O. for equality of partition to the Trustees as such Trustees as aforesaid :

Agreement  
between A. B.  
and G. O. for  
partition.

AND WHEREAS the said H. O. has agreed to release her right to dower in consideration of a sum of £—— to be paid by the said A. B. out of her separate estate and for the benefit of the inheritance (*q*) (as she hereby declares), and of a like sum of £—— to be paid by the said G. O., and the said H. O. has at the request of the said A. B. and G. O. also agreed to join in these presents for the purpose of conveying the legal estate in the said

Agreement to  
release dower  
and convey  
legal estate.

---

(*p*) As the tenant for life is entitled to the life estate as her separate property, she, without her husband, has the statutory powers: S. L. Act, 1881, s. 61 (2).

(*q*) Capital money could not under S. L. Act, 1882, s. 21 (ii.), be applied in discharging a right to dower which is only a determinable charge; hence it seems that the tenant for life would not be able to keep alive the sum paid by her, though she might take a conveyance of the right to dower.

Money paid for  
release of right  
to dower  
affecting  
settled land.

hereditaments (outstanding in her as such administratrix as aforesaid) in manner hereinafter appearing :

NOW THIS INDENTURE WITNESSETH as follows :—

Conveyance.

1. IN pursuance of the said agreement and in consideration of the sum of £100 now paid by the said G. O. by the direction of the said A. B. to the Trustees as such Trustees as aforesaid (the receipt whereof the Trustees hereby acknowledge), and of the sums of £—— and £—— now respectively paid by the said A. B. and G. O. to the said H. O. (the receipt of which sums the said H. O. hereby acknowledges), the said H. O. as to all the hereditaments hereinafter described hereby, As Personal Representative of the said N. O., deceased, conveys and as to her right to dower in the same hereditaments hereby, As Beneficial Owner, conveys and releases, and the said A. B. as to the one undivided moiety comprised in the Settlement of the hereditaments hereinafter described, in exercise of the power for this purpose conferred on her by the Settled Land Act, 1882, and of all other powers, and As Beneficial Owner, hereby conveys, and the said G. O. as to the other undivided moiety of the said hereditaments, and As Beneficial Owner, hereby also conveys and confirms unto the said J. K.

Parcels.

ALL the hereditaments described in the first and second Schedules hereto, and delineated on the plan hereto and thereon respectively edged red and green,

Habendum.

To HOLD unto the said J. K. in fee simple, discharged from all right to dower of the said H. O. and so discharged,

As to hereditaments in first schedule,

To THE USES following (namely):—

To use of G. O.

As to the hereditaments mentioned in the first Schedule hereto,

To THE USE of the said G. O. in fee simple ;

As to hereditaments in second schedule,

AND AS TO the hereditaments mentioned in the second Schedule hereto, To the Uses, Upon the trusts, and subject to the powers and provisions which under the Settlement, or by reason of any power of charging therein contained, were immediately before the execution of these presents subsisting in the undivided moiety of the said hereditaments comprised in the Settlement.

To uses of the Settlement.

2. (*Proviso qualifying A. B.'s statutory covenants, Form No. 1, Sect. III., Purchase Deeds, sup.*)

Acknowledgment and undertaking as to deeds.

3. THE SAID A. B. hereby acknowledges the right of the said G. O. to production of the Settlement and the other documents mentioned in the third Schedule hereto (which are to be retained

in the custody of the said A. B.), and to delivery of copies thereof, and hereby undertakes for the safe custody thereof (*r*).

IN WITNESS, &c.

(*Schedules.*)

#### No. IV.

DEED of PARTITION of SURFACE only between a TENANT for LIFE and an OWNER in FEE SIMPLE, an ANNUITANT concurring. GRANT of mutual rights as to MINERALS. MONEY paid for equality of PARTITION (*s*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*tenant for life of one moiety*), of the 1st part, C. D., of, &c., and E. F., of, &c. (hereinafter called the Trustees), of the 2nd part, J. B., of, &c. (*an annuitant*), of the 3rd part, G. H., of, &c. (*owner in fee simple of the other moiety*), of the 4th part, and X. Y., of, &c. (*grantee to uses*), of the 5th part :

WHEREAS by an Indenture (hereinafter called the Settlement) dated, &c., and made, &c., certain hereditaments in the County of —, including one undivided moiety of the L. Estate hereinafter mentioned, were appointed, subject to certain estates, charges and incumbrances (all of which, except the rentcharge hereinafter mentioned, have since determined, failed, or been extinguished) To the use of the said A. B. for his life, without impeachment of waste, with remainders over, And by the Settlement the Trustees were appointed trustees thereof for all the purposes of the Settled Land Acts, 1882 to 1890 :

AND WHEREAS the undivided moiety comprised in the Settlement is now charged with a yearly rentcharge of £ — payable to the said J. B. during his life, and secured to him by an Indenture dated, &c., which rentcharge is a charge having priority to the limitations of the Settlement, and is the only subsisting charge on the said undivided moiety having such priority :

(*r*) This clause assumes that the title deeds common to both properties will be retained by A. B., the tenant for life.

(*s*) See S. L. Act, 1882, ss. 3 (iv.), 4 (c), 17, 21 (iv.); S. L. Act, 1890, ss. 5, 12.

This deed should be executed in duplicate.

Seisin in fee  
of the other  
moiety.

AND WHEREAS the said G. H. is seised in fee simple in possession free from incumbrances of the other undivided moiety of the said L. Estate :

Agreement for  
partition.

AND WHEREAS the said A. B. and G. H., as tenant for life in possession and owner in fee simple respectively of the said undivided moieties of the said L. Estate, have agreed to make such a partition as hereinafter effected of the surface only of the said Estate, and that the sum of £—— should be paid for equality of partition by the Trustees (*t*) to the said G. H., and that these presents should contain such exceptions and reservations (*u*), and should confer such powers, rights, liberties and privileges (*v*), as are hereinafter expressed :

Agreement by  
amituant to  
concur.

AND WHEREAS the said J. B. has agreed to concur in these presents for the purpose of releasing the undivided moiety of the said L. Estate comprised in the Settlement from the said rentcharge of £—— in consideration of the hereditaments forming part of the said L. Estate hereinafter conveyed to the uses of the Settlement in severalty being made a substituted security for the said rentcharge, and for the purpose of effecting such substituted security the said A. B., as such tenant for life as aforesaid, has directed the said G. H. to concur in conveying the last-mentioned hereditaments in manner hereinafter appearing (*y*) :

NOW THIS INDENTURE WITNESSETH as follows :—

Conveyance.

1. IN pursuance of the said agreement and in consideration of the sum of £—— paid by the Trustees out of capital money in their hands as such Trustees as aforesaid and by the direction of the said A. B. to the said G. H. (the receipt of which sum of £—— the said G. H. hereby acknowledges), the said A. B., as to the undivided moiety comprised in the Settlement, and As Beneficial Owner, in exercise of the powers for this purpose conferred on him by the Settled Land Acts, 1882 to 1890, and of every other power enabling him, hereby conveys and the said J. B. for the purpose of releasing the said undivided moiety from his said rentcharge of £—— hereby, As Mortgagee, releases and

(*t*) See S. L. Act, 1882, s. 21 (iv.).

(*u*) See S. L. Act, 1882, ss. 4 (6), 17.

(*v*) See last-mentioned sections, and S. L. Act, 1890, s. 5.

(*y*) See S. L. Act, 1882, ss. 5, 24 (4), (5), (6).

confirms, and the said G. H. as to the other undivided moiety, and As Beneficial Owner, by the direction of the said A. B. hereby conveys unto the said X. Y.

ALL THOSE the lands and hereditaments situated in the Parish of X. and County of C., and known as the L. Estate, more particularly described in the first and second Schedules hereto, and delineated on the plan hereto and thereon edged red and green respectively, Save and except nevertheless out of the conveyance hereby made all mines, minerals, and mineral substances in or under the premises, or any part thereof,

Parcels.

Reservation of  
mines and  
minerals.

To HOLD unto the said X. Y. in fee simple (discharged as to the said undivided moiety comprised in the Settlement from the said rentcharge of £—— payable to the said J. B., and from all powers and remedies for securing the same, and from all the limitations, powers, and provisions of the Settlement, and from all estates, interests and charges subsisting or to arise thereunder),

Habendum.

To THE USES, Upon the trusts, and subject to the powers and provisions following (that is to say) :—

(1) As to the entirety of the premises, To THE USE that the said A. B. and the persons deriving title under the Settlement and the said G. H. and the persons deriving title under him, owners for the time being of the respective undivided moieties of the excepted mines, minerals, and mineral substances, may at all times and for ever hereafter have in fee simple and exercise with their respective lessees and licensees or otherwise in relation thereto all the powers, rights, liberties and privileges mentioned in the third Schedule hereto, and may henceforth work and get the said excepted mines, minerals, and mineral substances subject to the provisions and upon the terms mentioned in the same Schedule, and subject as aforesaid ;

Powers to work  
the excepted  
mines.

(2) As to the entirety of the hereditaments described in the first Schedule hereto and edged red on the said plan, To the Uses, Upon the trusts, and subject to the powers and provisions which, under the said Indenture of, &c., securing the said rentcharge in favour of the said J. B. and under the Settlement, or by reason of the exercise of any power of charging contained in the Settlement, were immediately before the execution of these presents subsisting or capable of taking effect with respect to the undivided moiety of the L. Estate comprised in the Settlement ;

Lands in first  
schedule to  
uses of Settle-  
ment charged  
with the  
rentcharge.

Lands in  
second  
schedule to  
use of G. H.  
in fee simple.  
Qualification  
of covenants.

AND AS TO the entirety of the hereditaments described in the second Schedule hereto and edged green on the said plan, To THE USE of the said G. H. in fee simple.

2. (*Proviso cutting down covenants of tenant for life, Form No. 1, Sect. III., Purchase Deeds, sup.*)

Acknowledg-  
ment and  
undertaking.

3. (*Acknowledgment and undertaking by A. B. with G. H. as to Settlement and title deeds in fourth schedule common to both properties to be retained by him, Form No. 6, Sect. III., Purchase Deeds, sup.*)

The like.

4. (*The like by J. B., as to the rentcharge deed, with X. Y., the grantee to uses.*)

IN WITNESS, &c.

(*First schedule, lands taken by A. B.; second schedule, lands taken by G. H.; third schedule, powers to work minerals, see Form No. 2, Sect. III., Purchase Deeds; fourth schedule, title deeds common to both properties retained by A. B.*)

#### No. V.

#### DEED of PARTITION of LEASEHOLDS between THREE TENANTS IN COMMON (z).

Parties.

THIS INDENTURE, made the — day of —, 19—, BETWEEN A. B., of, &c. (*one tenant in common*), of the 1st part, C. D., of, &c. (*another tenant in common*), of the 2nd part, and E. F., of, &c. (*the remaining tenant in common*), of the 3rd part (*Recite Lease, Form No. 28, Sect. I., Purchase Deeds, sup., of three houses, Nos. 1, 2, and 3, Smith Street, to A. B., C. D., and E. F., as tenants in common, at a rent of £12*):

Recite Lease.

Agreement  
for partition.

AND WHEREAS the parties hereto have agreed to make such partition of the said messuages and premises as is hereinafter contained :

NOW THIS INDENTURE WITNESSETH as follows:—

A. B. and  
C. D. assign  
their shares in  
Premises No. 1  
to E. F.

1. IN consideration of the assignments hereinafter made by the said E. F., the said A. B. and C. D., As Beneficial Owners hereby assign and release unto the said E. F.

Partition by  
way of sub-  
demise.

(z) To be executed in triplicate. Another method (see next Precedent) for effecting the partition would be for C. D. and E. F. to assign their interests to A. B., and then for him by two underleases to sub-demise a house to each of them at a rent of £4 for the residue of the head term less one day.

ALL THOSE the two several undivided third shares of the said A. B. and C. D. respectively in the said messuage No. 1, Smith Street, aforesaid, with the outbuildings, yard, and garden thereto belonging (which messuage and premises are hereinafter referred to as the Premises No. 1),

To HOLD unto the said E. F. to the intent that the said E. F. shall be henceforth possessed of the Premises No. 1 for the residue now unexpired of the said term of — years, and shall henceforth pay in respect of those premises the yearly rent of £4, being one-third part of the said yearly rent of £12 reserved by the recited Lease, and shall observe and perform the covenants and conditions contained in the said Lease and on the lessee's part to be observed and performed so far as the same relate to the Premises No. 1 (a).

2. In consideration of the assignments hereby made by the said C. D., the said A. B. and E. F., &c. (*assignment in similar form of two third parts of No. 2 to C. D.*).

3. In consideration of the assignments hereinbefore made by the said A. B., the said C. D. and E. F., &c. (*assignment in similar form of two third parts of No. 3 to A. B.*).

4. EACH of the parties hereto hereby covenants with the others of them and with each of them that he and his executors, administrators and assigns, will henceforth pay the rent hereinbefore made payable in respect of the premises taken by him under this partition, and observe and perform the covenants and conditions contained in the said Lease, and which henceforth ought to be observed and performed by the lessee in respect of those premises, and will save harmless and keep indemnified the other parties hereto and their respective executors, administrators and assigns, from and against the said rent, covenants and conditions, and all actions, claims and demands relating thereto, And each of the parties hereto hereby charges the premises taken by him under this partition with all money which may hereafter become payable under his covenant hereinbefore contained,

5. (*Acknowledgment and undertaking by A. B. with C. D. and E. F. for production and safe custody of the Lease, Form No. 6, Sect. III., Purchase Deeds, sup.*)

IN WITNESS, &c.

A. B. and E. F. assign their shares in Premises No. 2 to C. D., and C. D. and E. F. assign their shares in Premises No. 3 to A. B.

Mutual covenants for indemnity as regards rent and covenants in Lease.

Acknowledgment and undertaking,

(a) This apportionment will not bind the lessor unless the rent is apportioned by the lease.

## No. VI.

PARTITION of FREEHOLDS and COPYHOLDS and LEASEHOLDS  
by THREE PERSONS. *A part of the FREEHOLDS and  
COPYHOLDS is allotted to each and the TWO LEASEHOLD  
HOUSES are partitioned by way of sub-demise.*

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*one daughter*), of the 1st part, C. B., of, &c. (*another daughter*), of the 2nd part, E. B., of, &c. (*the other daughter*), of the 3rd part, and X. Y., of, &c. (*grantee to uses*), of the 4th part :

Seisin of free-  
holds and  
copyholds by  
late owner,

WHEREAS L. B., late of, &c., being seised in fee simple of the freehold hereditaments mentioned in the first, second, and third Schedules hereto, and being seised in customary fee simple of the copyhold hereditaments mentioned in the fourth, fifth, and sixth Schedules hereto according to the custom of the Manor of —, of which the same are holden (having acquired the said freehold and copyhold hereditaments by purchase in the year —), died on the — day of —, 1899, intestate, leaving the said A. B., C. B. and E. B., his only daughters and co-heiresses-at-law and according to the custom of the said Manor him surviving and without leaving any widow (*b*) :

and his death  
intestate,  
leaving his  
three  
daughters  
co-heiresses.

Lease of two  
messuages.

AND WHEREAS by an Indenture of Lease dated the — day of —, and made between R. S. of the one part, and the said L. B. of the other part, the two messuages situated at —, and being respectively Nos. —, were demised unto the said L. B. for a term of — years at the yearly rent of £10, and subject to the covenants and conditions therein contained, and on the part of the lessee to be observed and performed :

Letters of  
administra-  
tion.

AND WHEREAS Letters of Administration to the estate of the said L. B. were on the — day of — granted by the — Probate Registry to the said A. B., C. B. and E. B. (hereinafter collectively referred to as the Administrators) :

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(*b*) If the intestate died after 1897 the freeholds as well as the leaseholds would vest in the administrators. If the intestate was not admitted to the copyholds his equitable interest would also, it seems, vest in them: *Re Somerville and Turner*, 1903, 2 Ch. 583; 72 L. J. Ch. 727. The widow, if any, might be entitled to dower and free bench (unless barred) and to a share in the lease under the Statutes of Distribution of Intestates' Estates.

AND WHEREAS the Administrators have paid all the funeral and administration expenses and debts of the said L. B., including the duties payable on his death in respect of the said freehold, copyhold and leasehold hereditaments :

Administra-  
tion expenses.

AND WHEREAS the Administrators have agreed to partition the said freehold, copyhold and leasehold hereditaments, so that the freehold and copyhold hereditaments mentioned in the said first and fourth Schedules respectively should be taken in severalty by the said A. B.; that the freehold and copyhold hereditaments mentioned in the said second and fifth Schedules respectively and the said leasehold messuage No. — should be taken in severalty by the said C. B.; that the freehold and copyhold hereditaments mentioned in the said third and sixth Schedules respectively and the said leasehold messuage No. — should be taken in severalty by the said E. B.; and that the said leasehold hereditaments should be wholly vested in the said E. B. (c), who should carry out the partition thereof by sub-demise in manner hereinafter mentioned :

Agreement  
for partition.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the premises the Administrators, As the Personal Representatives of the said L. B., deceased, hereby convey, and each of the Administrators as to her undivided one-third share hereby, As Beneficial Owner, conveys and confirms unto the said X. Y.

Conveyance  
of freeholds.

ALL the freehold messuages, lands and hereditaments described in the first, second, and third Schedules hereto and delineated on the plan hereto and thereon respectively coloured red, green, and yellow,

Parcels.

To HOLD unto the said X. Y. in fee simple,

Habendum.

To THE USES following (that is to say):—

(1) AS to the hereditaments mentioned in the first Schedule hereto, To THE USE of the said A. B. in fee simple ;

(2) AS to the hereditaments mentioned in the second Schedule hereto, To THE USE of the said C. B. in fee simple ;

As to heredita-  
ments in  
several sche-  
dules to  
daughters  
respectively in  
fee simple.

(3) AND AS to the hereditaments mentioned in the third Schedule hereto, To THE USE of the said E. B. in fee simple.

(c) The lease will be handed over to E. B., as C. B. is to take an underlease. If any acknowledgment of C. B.'s right to production of the lease is given, that will appear in the underlease, see Conv. Act, 1881, s. 13, which leaves an underlessee the right to call for the lease out of which the sub-term is created.

Production of  
head lease.

Covenants by two daughters to surrender copyholds to other daughter.

2. IN further pursuance of the said agreement and in consideration of the premises, the said C. B. and E. B., As Beneficial Owners, hereby jointly and severally covenant with the said A. B. that the said C. B. and E. B. respectively will, at the cost of the said A. B., forthwith surrender (*d*) into the hands of the lord (*or* lady) of the said Manor

Par els.

ALL THOSE the two undivided third shares of the said C. B. and E. B. respectively in the copyhold hereditaments mentioned in the fourth Schedule hereto, and edged purple on the said plan,

TO THE USE of the said A. B., her heirs and assigns, at the will of the lord according to the custom of the said Manor by and under the rents, suits and services therefor due and of right accustomed, and TO THE INTENT that the said A. B. may be admitted to the entirety of the hereditaments mentioned in the fourth Schedule hereto.

3 AND 4. (*Similar covenants by A. B. and E. B. with C. B. to surrender their shares in the copyhold hereditaments comprised in the fifth schedule to the use of C. B., and by A. B. and C. B. with E. B. to surrender their shares in the copyhold hereditaments comprised in the sixth schedule to the use of E. B.*)

Assignment by two daughters of their shares in the Lease to the other daughter in trust to grant an underlease of one house.

5. IN further pursuance of the said agreement and in consideration of the premises, each of them the said A. B. and C. B., as to her one-third share or other interest, and As Beneficial Owner, hereby assigns and releases unto the said E. B.

ALL the premises comprised in or demised by the recited Lease (*e*),

TO HOLD unto the said E. B. for the residue of the said term of — years, at the rent reserved by and subject to the covenants and conditions in the said Lease contained and on the part of the lessee to be observed and performed, TO THE INTENT that the entirety of the premises comprised in the said Lease may be vested in the said E. B., And as to the messuage No. — Street aforesaid absolutely and beneficially, But as to the messuage No. — Street aforesaid UPON TRUST

Surrender by customary heirs before admission.

(*d*) If the intestate had been admitted then his co-heiresses can surrender before they are called on to be admitted. The partition must be perfected by the surrender referred to and the consequential admissions.

(*e*) If the personal representatives of the intestate are different persons from the beneficiaries they must be joined in the assignment; they would also be necessary parties to the conveyance of the freeholds if the intestate died after 1897.

to grant an underlease thereof to the said C. B. for the residue of the term granted by the recited Lease except the last day thereof at a yearly rent of £5, and subject to covenants and conditions corresponding as nearly as may be with the covenants and conditions contained in the recited Lease, and generally in the form of the Underlease already prepared and intended to be executed immediately after these presents.

6. (*Covenant by E. B. with A. B. and C. B. to pay the rent and indemnify them and the estate of the intestate, Form No. 5, Sect. III., Purch. Deeds, sup.*) Covenant for indemnity.

7.—(i.) (*Acknowledgment, &c., by A. B. of the rights of C. B. and E. B. as to documents of title to freeholds and copyholds in first and fourth schedules and also relating to lands in other schedules; see Form No. 6, Sect. III., Purch. Deeds, sup.*) Acknowledgments and undertakings of common title deeds.

(ii.) (*The like by C. B. to A. B. and E. B. as to documents relating to lands in second and fifth schedules and also relating to lands in third and sixth schedules; see Form No. 6, Sect. III., Purch. Deeds, sup.*)

IN WITNESS, &c.

[*First schedule, freeholds taken by A. B.; second schedule, the like taken by C. B.; third schedule, the like taken by E. B.; fourth schedule, copyholds taken by A. B.; fifth schedule, the like taken by C. B.; sixth schedule, the like taken by E. B.; seventh schedule—first part, documents retained by A. B.; second part, documents retained by C. B.*]

## No. VII.

PARTITION of FREEHOLDS, COPYHOLDS, LEASEHOLDS, CAPITAL MONEY, and HEIRLOOMS, where a limitation to tenants in common in tail has taken effect, one share being partitioned by S. L. ACT TRUSTEES on behalf of an INFANT TENANT IN TAIL.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*owner of a moiety*), of the 1st part, R. T., of, &c., and K. T., of, &c. (hereinafter called the Trustees), of the 2nd part, and X. Y., of, &c. (*grantee to uses*), of the 3rd part: Parties.

WHEREAS under an Indenture (hereinafter called the Settlement) dated, &c., and made between J. B. (since deceased) of the Recital of effect of Settlement.

deaths of parties, &c., as to the freeholds at the date of the Disentailing Assurance.

1st part, C. D., spinster (since deceased afterwards and herein after called C. B.), of the 2nd part, and P. T. and Q. T. of the 3rd part (being a Settlement made in consideration of the marriage shortly afterwards solemnised between the said J. B. and C. B.), and by reason of the deaths of the said J. B. and C. B. on the — day of — and the — day of —, having had issue two children and no more, namely, the said A. B. (who was born on the — day of —) and D. B. (who was born on the — day of —, and is accordingly still an infant), and without having exercised any power of appointment conferred by the Settlement in favour of their issue, and by virtue of divers dispositions to the uses of the Settlement the freehold hereditaments mentioned in the first parts of the first and second Schedules hereto stood limited at the date of the Disentailing Assurance hereinafter recited To the Use of the said A. B. and D. B. in equal shares as tenants in common in tail, with cross remainders in tail between them, with divers remainders over, And by the Settlement the said P. T. and Q. T. were appointed to be Trustees thereof for all the purposes of the Settled Land Acts, 1882 to 1890:

That the Trustees are the present S. L. Act trustees.

AND WHEREAS by reason of the deaths and by virtue of the several Indentures of Appointment of New Trustees mentioned in the third Schedule hereto the Trustees became and are the present trustees of the Settlement for the purposes of the said Acts:

As to the title to the copyholds,

AND WHEREAS under the Settlement and by virtue of divers surrenders and admissions the copyhold hereditaments mentioned in the second parts of the first and second Schedules hereto were at the date of the said Disentailing Assurance vested in the Trustees for a customary estate in fee simple as tenants on the rolls Upon Trusts corresponding as nearly as might be with the subsisting uses declared by the Settlement concerning the said freehold hereditaments:

As to the title to the leaseholds,

AND WHEREAS under the Settlement and by virtue of divers assignments the leasehold hereditaments mentioned in the third parts of the first and second Schedules hereto were at the date of the said Disentailing Assurance vested in the Trustees for the residues of the respective terms for which the same are held Upon Trusts corresponding as nearly as might be with the subsisting uses declared by the Settlement concerning the said freehold hereditaments, with a provision preventing any share in

the same vesting in the said D. B. unless he attained the age of twenty-one years, and so that in that case the same should devolve in the same manner as if they had been freehold of inheritance and been included in the Settlement :

AND WHEREAS by virtue of divers sales and other dispositions under the powers of the Settled Land Acts aforesaid of property formerly subject to the limitations of the Settlement certain capital money became payable to the Trustees for the time being thereof, and after payment thereof of certain sums for improvements and costs the net balance was at the date of the said Disentailing Assurance and is now represented by the investments and money mentioned in the fourth parts of the first and second Schedules hereto and standing in the joint names of the Trustees as such Trustees as aforesaid :

As to the title to the capital money.

AND WHEREAS by virtue of the Settlement certain chattels (now represented by the chattels mentioned in the fifth parts of the first and second Schedules hereto) were settled Upon trust to devolve as heirlooms along with the freehold hereditaments thereby settled, but so that the same or any undivided share thereof should not vest absolutely in any person thereby made tenant in tail thereof by purchase who should die under the age of twenty-one years, And the Settlement contained a power for the trustees or trustee for the time being thereof to allot or apportion any of the said chattels to or between the persons entitled thereto at a valuation or otherwise as such trustees or trustee should think fit :

As to the title to the heirlooms and power to apportion the same.

AND WHEREAS by an Indenture (duly enrolled at the Central Office and on the court rolls of the several manors of which the said copyhold hereditaments are held as a Disentailing Assurance) dated, &c., and made between the said A. B. of the one part and the Trustees of the other part, the said A. B. conveyed his moiety or other share or interest in the said freehold hereditaments to the Trustees in fee simple discharged from his estate tail and all estates, rights, interests and powers to take effect after the determination or in defeasance of his estate tail To the Use of the said A. B. in fee simple, and conveyed his moiety or other share or interest in the said copyhold hereditaments (*f*) in like manner To the Use of himself in fee simple,

Disentailing Assurance of freeholds, copyholds, and capital money.

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(*f*) The estate tail in the copyholds being equitable, can be barred by deed.

and assigned his moiety or other share or interest in the capital money and investments mentioned in the fourth parts of the first and second Schedules hereto in like manner In Trust for himself absolutely and discharged from the liability to be invested in the purchase of land (g) :

Agreement  
for partition.

AND WHEREAS the said A. B. and the Trustees, as the persons having the statutory powers of a tenant for life on behalf of the said D. B., and in exercise of the power of allotment conferred by the Settlement in regard to the said chattels, have agreed that such partition shall be made as hereinafter appearing :

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows :—

Conveyance of  
freeholds.

1. In pursuance of the said agreement and in consideration of the premises, the said A. B., as to his one undivided moiety to which he is entitled as aforesaid, hereby, As Beneficial Owner, conveys and the Trustees as to the other undivided moiety, in exercise of the powers for this purpose conferred by the Settled Land Acts, 1882 to 1890, and of all other powers, hereby, As Trustees, convey unto the said X. Y.

Parcels.

ALL AND SINGULAR the messuages, lands and hereditaments described in the first parts of the first and second Schedules hereto,

Habendum.

To HOLD unto the said X. Y. in fee simple

To THE USES following (namely) :—

As to the hereditaments described in the first part of the first Schedule hereto, To THE USE of the said A. B. in fee simple,

AND AS TO the hereditaments described in the first part of the second Schedule hereto, To the uses, Upon the trusts, and subject to the powers and provisions which under the Settlement or otherwise were immediately before the execution of these presents subsisting or capable of taking effect with respect to the former undivided moiety of the said D. B. in the freehold hereditaments then subject to the Settlement, but not so as to increase or multiply charges or powers of charging.

Trustees  
cannot parti-  
tion between  
tenants in tail  
under the  
S. L. Act

(g) This partition is made under S. L. Act, 1882, ss. 19 and 60; see *Cooper v. Belsey*, 1899, 1 Ch. 639; 68 L. J. Ch. 258, as regards the moiety still settled. If the entirety of the land remained settled the trustees could not under the Act effect a partition between infant tenants in tail: ss. 2 (6), 58 (1), (2), but a power for that purpose may be given by the settlement.

2. In further pursuance of the said agreement and in consideration of the premises, the Trustees, in exercise of the aforesaid powers, and As Trustees, hereby, covenant (*h*) with the said A. B. that they and all other necessary parties will forthwith at the cost of the said A. B. surrender into the hands of the lords of the several manors of which the same are held

Covenant to surrender copyholds in second part of first schedule.

ALL the copyhold hereditaments described in the second part of the first Schedule hereto,

To THE USE of the said A. B., his heirs and assigns, at the will of the lords according to the customs of the said manors by and under the rents, fines, suits and services therefor due and of right accustomed, and discharged from all the limitations, powers and provisions of the Settlement.

3. In further pursuance of the said agreement and for the consideration aforesaid, the said A. B., As Beneficial Owner, hereby conveys and releases unto the Trustees

Release of equitable interest in copyholds in second part of second schedule.

ALL THAT the equitable interest of the said A. B. in his moiety of ALL AND SINGULAR the copyhold hereditaments described in the second part of the second Schedule hereto,

To HOLD unto the Trustees, their heirs and assigns,

To THE INTENT that the entirety of the hereditaments described in the second part of the second schedule hereto may be vested in the Trustees Upon the trusts and subject to the powers and provisions which under the Settlement or otherwise were immediately before the execution of these presents subsisting or capable of taking effect with respect to the undivided moiety of the said D. B. in the copyhold hereditaments then subject to the trusts of the Settlement, but not so as to increase or multiply charges or powers of charging (*i*).

4. In further pursuance of the said agreement and for the consideration aforesaid, the Trustees, in exercise of the powers aforesaid, hereby As Trustees assign to the said A. B.

Assignment of leaseholds in third part of first schedule.

ALL the premises respectively comprised in the Leases mentioned in the third part of the first Schedule hereto,

Parcels.

To HOLD unto the said A. B. for the respective residues of the terms of years for which the same are respectively held at the

Habendum.

(*h*) The trustees under S. L. Act, 1882, s. 20, could only convey a moiety; hence in this case, instead of conveying, they should surrender.

(*i*) As A. B. was never admitted, he may give this release by deed, see Elton, 2nd ed., 93; *R. v. Hendon* (1788), 2 T. R. 484.

rents and subject to the lessee's covenants and the conditions respectively contained in the said Leases.

Covenant to pay rents and indemnify.

5. (*Covenant by A. B. with the Trustees to pay rents, &c., and indemnify them and the estate and effects of former trustees, Form No. 5, Sect. III., Purch. Deeds, sup.*)

Release of equitable interest in Leases in third part of second schedule. Parcels.

6. IN further pursuance of the said agreement and for the consideration aforesaid, the said A. B., As Beneficial Owner, hereby assigns and releases unto the Trustees

ALL THAT his equitable interest in his moiety of ALL the premises respectively comprised in the Leases mentioned in the third part of the second Schedule hereto,

TO THE INTENT that the entirety of the premises comprised in those Leases may be vested in the Trustees UPON THE TRUSTS (*continue as in clause 3, substituting "leasehold" for "copyhold"*).

Capital money and heirlooms in fourth and fifth parts of first schedule to be transferred to A. B.

7. THE Trustees shall forthwith transfer and hand over to the said A. B. and at his cost ALL the investments, money and chattels mentioned in the fourth and fifth parts of the first Schedule hereto (after deducting out of such money all costs properly payable by the said A. B.), and the same shall thenceforth be by virtue of these presents discharged from all the trusts and provisions of the Settlement (*k*).

Release of equitable interest in capital money and heirlooms in fourth and fifth parts of second schedule.

8. IN further pursuance of the said agreement and for the consideration aforesaid, the said A. B., As Beneficial Owner, hereby assigns and releases unto the Trustees

ALL THAT his equitable interest in his moiety of—

FIRST, ALL the capital money and investments mentioned in the fourth part of the second Schedule hereto,

AND SECONDLY, ALL the heirlooms and chattels mentioned or referred to in the fifth part of the second Schedule aforesaid,

TO THE INTENT that the entirety of the premises released by this clause may be vested in the Trustees UPON THE TRUSTS (*continue as in clause 3, substituting "capital money, investments, and heirlooms" for "copyhold hereditaments," and add at end, "and so that all capital money and investments shall be liable to be laid out in the purchase of land for an estate in fee simple to be settled in like manner as the freehold hereditaments remaining subject to the Settlement"*).

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(*k*) No doubt in a case of this nature A. B. would arrange to give the trustees a separate release and indemnity.

9. PROVIDED ALWAYS, that nothing herein contained shall prejudice or affect any estate or interest in the property mentioned in the second Schedule hereto to which the said A. B. may become entitled in possession under the limitations or trusts of the Settlement by reason of the death of the said D. B. without having barred his estate tail or leaving issue inheritable thereto:

Saving of estates in remainder of A. B.

10. (*Acknowledgment by the Trustees of A. B.'s right to production of the Settlement and documents in third and fourth schedules, Form No. 6, Sect. III., Purch. Deeds, sup.*)

Acknowledgment of right to production of documents in third and fourth schedules.

IN WITNESS, &c. (l)

(*First schedule, five parts, freeholds, copyholds, leaseholds, capital money, and heirlooms allotted to A. B.; second schedule, five parts, the like to remain subject to the limitations of the Settlement; third schedule, deaths of Trustees and appointments of new Trustees; fourth schedule, documents relating to both titles retained by the Trustees.*)

### SECTION III.

## ENFRANCHISEMENT DEEDS.

### *Enfranchisement of Copyholds.*

#### PRELIMINARY NOTE.

COPYHOLD land may be enfranchised, *i.e.*, converted into freehold, by a conveyance of the freehold from the lord of the manor to the tenant on the rolls: *Wilson v. Allen* (1820), 1 Jac. & W. 611. It is generally desirable to include the minerals in the enfranchisement and to arrange for a re-grant of commonable rights. An enfranchisement may be made (1) without the aid of any statutory powers, by a person seised in fee simple or having an absolute power to dispose of the fee simple of the manor; (2) under the powers conferred by the S. L. Acts, by a tenant for life or person having the power of a tenant for life: S. L. Act, 1882, ss. 3 (ii.), 4 (1), 55 (2); (3) under the Cop. Act, 1894, by a person seised of the manor for life, or in tail, or in fee simple, and whether having power to sell the manor or not, or the person for the time being filling the character of or acting as lord, whether lawfully entitled or not; or (4) by trustees under a trust for sale. In this case it is desirable that they should have the S. L. Act powers to enable them

Copyhold land may be enfranchised,

independently of statute, or under S. L. Acts, or Cop. Act.

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(l) To be executed in duplicate.

to re-grant commonable rights. If not, an order under S. L. Act, 1884, s. 7, may be necessary for this purpose. To make an enfranchisement effectual, it is not necessary that the tenant should have the whole customary fee simple. If he has a partial interest only, the enfranchisement will enure for the benefit of those in remainder as well as himself: 1 Watk., 4th ed., 437, 438. An enfranchisement will be valid if a grant is made to a person who has been *de facto* admitted, though he may only have had an equitable interest in the copyholds and not a legal right to be admitted: Elton, 2nd ed., 355.

Enfranchisement by severance of the manor.

Where on the conveyance of a manor part of the copyhold land comprised therein is reserved, or where the lord conveys the freehold to a person who is not his tenant, it has been held (*Murrel v. Smith* (1591), 4 Co. 24 b; *Melwich v. Luter* (1588), 4 Co. 26 a, a case which shows the position of the grantee of the freehold in *all* the copyholds of a manor, see also *Wilson v. Allen*, *sup.*; *Minton v. Kirwood* (1868), L. R. 3 Ch. 614; 37 L. J. Ch. 606) that though the tenant loses his right to alienate, the lord no longer having the seignory, yet this does not effect an enfranchisement. The more general view, however, is that an equitable enfranchisement is the result, and that the copyholder may deal with his land by common law assurance as the only mode that he has left to him.

The following is a summary of the principal provisions of the Cop. Act, 1894, with reference to enfranchisements:—

Tenant or lord may require enfranchisement.

1. Where there is an admitted tenant of copyhold land, the tenant or lord may require and compel enfranchisement, but the tenant must first have paid or tendered the fine and fees due on the last admittance: ss. 1, 3, see also Board of Agriculture and Fisheries Act, 1903. The consideration to be paid to the lord for the enfranchisement, unless the parties agree, is to be ascertained by valuation under the direction of the Board of Agriculture and Fisheries: ss. 5, 8. (The Board will, on application, furnish a copy of their rules for ascertaining the amount of the enfranchisement money, and it is now usual, whether the enfranchisement is effected under the Act or not, to fix the amount pursuant to these rules); and the tenant must pay compensation to the steward of the manor according to an *ad valorem* scale: s. 9.

Consideration, how to be ascertained.

In certain cases lord may elect to purchase tenant's interest instead of enfranchising.

2. Where the lord can show to the satisfaction of the Board that any change in the condition of land proposed to be enfranchised, which might have been prevented by the incidents of copyhold tenure, would prejudicially affect in enjoyment or value the mansion-house and grounds of the lord, the lord may offer to purchase the tenant's interest at a valuation, and if the tenant refuse, the land shall not be enfranchised unless the Board think fit to impose terms and conditions sufficient, in their opinion, to protect the interests of the lord: s. 11.

3. Any lord or tenant or owner of any land liable to any heriot or any quit rent, or other manorial incident, may require and compel the extinguishment of such rights and incidents, and the provisions as to enfranchisement are made applicable to such an extinguishment : s. 2. Quit rents and other perpetual annual sums may also be redeemed under s. 45 of the Conv. Act, 1881.

Lord or tenant may compel extinguishment of manorial incidents.

4. The lord and tenant may, with the consent of the Board, agree to make a voluntary enfranchisement of any copyhold land, but if either of them has a limited estate only, he must give notice to the person next entitled to an estate of inheritance in the manor or land : s. 14.

Power to effect voluntary enfranchisement.

5. The consideration for a voluntary enfranchisement may be either a gross sum, or a rentcharge, or a conveyance of land, or of a right to mines or minerals, or a conveyance of a right to waste in lands belonging to the manor, or partly in one and partly in another or others of those ways : ss. 15, 17, 18.

Consideration for voluntary enfranchisement.

6. A voluntary enfranchisement under the Act may be effected, with the consent of the Board, by such a deed as would be proper on an enfranchisement by a lord seised of the manor in fee simple : s. 16.

Deed to effect enfranchisement.

7. On a voluntary enfranchisement under the Act, the land enfranchised is charged with every sum payable to the lord in respect of the enfranchisement, with interest thereon, and the lord is to be deemed to be seised in fee simple of the land so charged as mortgagee in fee, and he may distrain for interest as if it were rent in arrear : s. 19.

Enfranchisement consideration to be a charge on land.

8. After enfranchisement the land enfranchised will be held under the same title as that under which it was previously held ; every mortgagee of the copyhold estate will become a mortgagee of the freehold estate ; and all rights and interests previously existing in the copyhold land will continue to attach to it when enfranchised : s. 21.

Effect of enfranchisement.

9. Commonable rights attached to land when copyhold will continue to attach thereto after enfranchisement, and an enfranchisement does not affect the estate or rights of any lord or tenant in mines, minerals, quarries, &c. ; but the owner of enfranchised land may, notwithstanding the reservation of minerals, &c., to the lord, disturb or remove the soil for the purpose of making roads or drains, or erecting buildings or obtaining water : ss. 22, 23, 24.

Enfranchisement not to affect commonable rights, or rights in mines, &c.

10. When an enfranchisement is made by a lord having a limited interest only, the consideration money is to be paid to trustees or into court, except that when it is under £20 the Board may direct it to be retained by the lord : s. 26.

How enfranchisement money to be paid, when lord has limited interest.

11. When the consideration for an enfranchisement is a rentcharge, it is to be a first charge on the land, and to be recoverable as provided by s. 44 of the Conv. Act, 1881, and it may be redeemed : ss. 27 to 31.

Incidents of a rentcharge, when made the consideration.

12. Provision is made for the investment and application of money paid to trustees or into Court : ss. 32, 33.

Application of money paid into Court.

Expenses, how to be borne.

13. The expenses of a compulsory enfranchisement are to be borne by the person who requires the enfranchisement, and the expenses of a voluntary enfranchisement are to be borne by the lord and tenant in such proportions as they shall agree, or the Board shall determine : s. 34.

Power to tenant to charge land for consideration money and expenses.

14. The tenant is empowered to charge any enfranchised land with all money paid by him as the consideration for the enfranchisement, and with the expenses. The charge may be for a principal sum and interest not exceeding £5 per cent. per annum, or by way of terminable annuity, and it may be by a deed of mortgage or by a certificate of charge. A certificate of charge must be under the seal of the Board and countersigned by the person at whose instance the charge is made : ss. 36 to 41.

Certificate of charge.

Notice of right to enfranchise to be given by steward to tenant.

15. On the admittance of any tenant, the steward of the manor is bound to give to him a notice of his right to obtain his enfranchisement : s. 42.

16. The powers conferred by the Act on a lord or a tenant may be exercised by a person having a limited estate only in the manor or land, or by a trustee or the guardian of an infant or a married woman : ss. 43 to 46.

Confirmation by Board conclusive.

17. The confirmation by the Board of an award of enfranchisement, or the execution by the Board of a deed of enfranchisement, is conclusive evidence of the regularity of the proceedings, and no award or deed of enfranchisement can be impeached for any omission, mistake or informality : s. 61.

Inspection of court rolls after enfranchisement.

18. Any person interested in any enfranchised land may inspect and obtain copies of the court rolls on payment of a reasonable sum : s. 62.

Copyholds for lives or years where no right of renewal.

19. The provisions of the Act with respect to a compulsory enfranchisement do not apply to copyholds for a life or lives, or for years, where there is no right of renewal : s. 96.

Restraint on creation of new copyholds.

No new copyholds can be created without the consent of the Board : s. 81. It is conceived that this would not prevent a copyholder (Vendor) from surrendering land to the lord to the use, *e.g.*, that a purchaser of adjoining copyholds should have an easement over the land retained by the Vendor, nor prevent a Vendor from reserving to himself an easement created *de novo* for the benefit of the copyhold land retained. The easement so created or reserved is not a new tenement, but a right for the benefit of an existing tenement. The Statute of Uses does not of course apply to copyholds, but a surrender to the lord to the use that an easement should be created appears to create a legal customary interest.

Customary freeholds.

Customary freeholds are held according to the custom of the manor, but not at the will of the lord, and pass by surrender and admittance, or by deed and admittance, according to the custom, and in some manors they will pass by deed or surrender : Elton, 2nd ed., 2, 50 ; 1 Watk., 1th ed., 58, n. ; Cruise, Dig. tit. 10, c. 1., ss. 6 *et seq.*

An enfranchisement award is chargeable with the same stamp duty as an enfranchisement deed : Stamp Act, 1891, s. 58 (2) ; Alpe, 11th ed., 105—that is to say, *ad valorem* on the consideration paid for the enfranchisement, or if no money is paid, 10s. Stamps.

It is not clear whether an enfranchisement deed is a “transfer on sale” within the meaning of Fin. (1909-10) Act, 1910, s. 1 (a), and so chargeable with increment value duty. In the S. L. Acts an enfranchisement is treated as a sale : S. L. Act, 1882, s. 3 (ii.). Increment value duty.

## No. I.

### DEED of ENFRANCHISEMENT of COPYHOLDS and RE-GRANT of COMMONABLE RIGHTS (m).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*lord of the Manor*), of the one part, and C. D., of, &c. (*copyholder*), of the other part : Parties.

WHEREAS the said A. B. is seised in fee simple in possession free from incumbrances of the Manor of E., in the County of — : Recital of seisin.

AND WHEREAS on the — day of —, the said C. D. was admitted tenant out of court to the hereditaments hereinafter described, To Hold to him and his heirs, at the will of the lord, according to the custom of the said Manor, at and under the rents, fines, heriots, suits and services therefor due and of right accustomed : Admittance of copyholder.

AND WHEREAS the said C. D. has agreed with the said A. B. for the enfranchisement of the hereditaments hereinafter described and the re-grant of commonable and other rights hereinafter contained at the price of £ — : Agreement for enfranchisement.

NOW THIS INDENTURE WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration, &c., the said A. B., As Beneficial Owner, hereby enfranchises, conveys and releases unto the said C. D. Enfranchisement by lord to tenant.

(m) If the enfranchisement is made under the Copyhold Act, 1894, the rights of common over the lord's waste are preserved : s. 22 ; *secus* if the enfranchisement is made by grant : Scriven, 7th ed., 329. Unless the lord consents, the minerals, &c., are reserved in an enfranchisement under the Act : s. 23 ; but in a grant the minerals will pass unless expressly reserved. When practicable the enfranchisement should be effected by grant, but it is usual to fix the amount of the enfranchisement money in accordance with the tables issued by the Board of Agriculture, &c., for the purposes of the Act. Rights of common, minerals, enfranchisement, money.

Parcels,  
including  
minerals and  
re-grant of  
commonable  
rights.

ALL the hereditaments described in the first Schedule hereto and delineated on the plan hereto, and thereon coloured pink,

TOGETHER with all mines and minerals in, on or under the premises,

AND TOGETHER with all commonable and other easements, rights and privileges which immediately before the execution hereof were appendant or appurtenant to the said hereditaments or reputed so to be or usually held therewith, or any part thereof,

TO THE INTENT that these presents shall operate as a re-grant thereof,

Habendum.

TO HOLD unto and TO THE USE of the said C. D. in fee simple as freehold and henceforth discharged from all rents, fines, heriots, suits, services and other incidents of copyhold tenure.

Acknowledg-  
ment, &c., as  
to deeds and  
court rolls.

2. THE said A. B. hereby acknowledges the right of the said C. D. to production of the Court Rolls so far as they relate to the said hereditaments and of the documents mentioned in the second Schedule hereto and to delivery of copies thereof and hereby undertakes for the safe custody thereof (u).

(Add Form No. 11, Sect. III., Purch. Deeds, if required.)

IN WITNESS, &c.

(First schedule, of lands ; second schedule, of documents of title.)

## No. II.

### DEED of ENFRANCHISEMENT of COPYHOLDS and RE-GRANT of COMMONABLE RIGHTS by a TENANT for LIFE under the SETTLED LAND ACTS (o). VARIATIONS where MINES and MINERALS are reserved.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (tenant

Whether lord  
can be re-  
quired to give  
acknowledg-  
ment or  
undertaking.

(u) The *dictum* of Bacon, V.-C., in *Re Agg-Gardner* (1884), 25 Ch. D. 600 ; 53 L. J. Ch. 347, that the lord could not be required to give an acknowledgment or undertaking as to the title deeds of the manor, cannot, it is submitted, be supported. A lord of a manor enfranchising for valuable consideration is in the same position in this respect as an ordinary vendor. The fact that, under an open contract, a purchaser of the enfranchised copyholds would not be entitled to inquire into the lord's title is not a sufficient reason for the *dictum*, and see Wolst. Conv. Acts, 9th ed., 21. The acknowledgment should extend to the court rolls of the manor so far as they relate to the premises enfranchised, *cf. Earl Ponlett v. Hood* (1868), L. R. 5 Eq. 115 ; 37 L. J. Ch. 224. The steward is entitled to keep the court rolls for the purpose of discharging his office, and the lord cannot, in the absence of misconduct, call upon the steward to give them up ; hence both the lord and the steward have a qualified right to their custody : *Re Jennings*, 1903, 1 Ch. 906 ; 72 L. J. Ch. 454.

Enfranchise-  
ment under  
S. L. Acts.

(o) Under S. L. Act, 1882, s. 3 (ii.), enfranchisement is treated as a sale ;

for life of Manor), of the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees). of the 2nd part, and C. D., of, &c. (copyholder), of the 3rd part :

WHEREAS under an Indenture of Settlement dated the — day of —, and made, &c., the Manor of —, in the County of — (with other hereditaments) (*Form No. 10, Sect. I., Purch. Deeds, sup.*) :

Recital of Settlement of Manor and appointment of S. L. Act Trustees.

AND WHEREAS on the — day of — the said C. D. was admitted to the copyhold hereditaments hereinafter described, parcel of the said manor, To Hold to him and his heirs at the will of the lord according to the custom of the said Manor :

Admittance of C. D.

AND WHEREAS the said A. B., as tenant for life in possession under the recited Settlement of the said Manor, has agreed with the said C. D. for the enfranchisement of the copyhold hereditaments hereinafter described [with the exception of the mines and minerals thereunder] and the re-grant of commonable and other rights hereinafter contained at the price of £— :

Agreement for enfranchisement.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £— now paid by the said C. D. by the direction of the said A. B. to the Trustees as such Trustees as aforesaid (*the receipt, &c.*), the said A. B., in exercise of the power for this purpose conferred on him by the Settled Land Acts, 1882 to 1890, and of all other powers, and As Beneficial Owner, hereby enfranchises, conveys and releases unto the said C. D.

Enfranchisement.

ALL THOSE, &c. (*referring to first schedule*), to which the said C. D. was admitted as aforesaid,

Parcels.

TOGETHER with all the mines and minerals in, on or under the said hereditaments,

[EXCEPT and Reserved out of this conveyance to the said A. B. and his successors in title and the persons deriving title under him or them in fee simple (*continue as in Form No. 2, Sect. II., Purch. Deeds, sup.*).]

Exception of mines, minerals, and powers of working.]

hence is included under the term "sale" used subsequently in the Act, except in s. 55 (2), where enfranchisement includes enfranchisement under a power in a settlement.

Under S. L. Act, 1882, s. 4 (7), an enfranchisement may be made with or without a re-grant of common and other rights.

Rights of common.

Under S. L. Act, 1882, s. 3 (ii.), the mines and minerals may be reserved, but pass under a grant unless expressly reserved: MacSwiney on Mines, 2nd ed., 46; Scriven, 7th ed., 306, 307.

Mines and minerals.

Re-grant of  
commonable  
rights, &c.

AND [by way of grant and not of exception] TOGETHER with all commonable and other rights (*continue as in last Precedent*),

To HOLD unto and To the Use of said C. D. in fee simple [or unto the said C. D. in fee simple To the Use that the rights and privileges hereinbefore reserved shall remain and be To the Uses which under the recited Settlement are subsisting with respect to the excepted minerals and subject thereto To the Use of the said C. D. in fee simple] as freehold henceforth and for ever discharged from all rents, fines, heriots, suits and services and all other incidents whatsoever of copyhold or customary tenure, AND ALSO discharged from all the limitations, trusts, powers and provisions of the recited Settlement and from all estates, interests and charges subsisting or to arise thereunder.

Proviso quali-  
fying cove-  
nants for title.

2. PROVIDED ALWAYS, that so far as regards (*Form No. 1, Sect. III., Purch. Deeds, sup.*).

Acknowledg-  
ment, &c.

3. THE said A. B. hereby acknowledges, &c. (*as in last Precedent*).

IN WITNESS, &c.

(*First schedule, of lands ; second schedule, of documents.*)

### No. III.

#### DEED of ENFRANCHISEMENT under the COPYHOLD ACT, 1894 (*q*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of &c. (*lord of the Manor*), of the 1st part, the Board of Agriculture and Fisheries (hereinafter called the Board), of the 2nd part, and C. D., of, &c. (*tenant*), of the 3rd part :

Recital of  
relation of  
parties.

WHEREAS the said A. B. is the lord of the Manor of —, in the County of —, and the said C. D. is the tenant of the copyhold lands hereinafter described within the meaning of the Copyhold Act, 1894 :

Agreement for  
enfranchise-  
ment.

AND WHEREAS the said A. B. and C. D. have agreed, with the consent of the Board, that the said lands shall be enfranchised in consideration of the sum of £—— to be paid by the said C. D. to the said A. B. [*or instead of the words "to be paid, &c."* :

[Payment of  
purchase-  
money into  
Court.]

AND WHEREAS the said A. B. has a limited estate only in the said Manor, and the said sum of £—— has, by the direction of the Board, been paid by the said C. D. into Court to an account "*Ex parte* the Board of Agriculture and Fisheries" :]

(*q*) See Preliminary Note to Enfranchisements, *sup.* ; this Precedent and the notes thereto only apply where the enfranchisement is effected under the statutory powers.

NOW THIS INDENTURE WITNESSETH that in pursuance Conveyance.  
of the said agreement and in consideration of the sum of £——  
now paid by the said C. D. to the said A. B. (the receipt whereof  
the said A. B. hereby acknowledges) [*or* in consideration of the  
sum of £—— paid by the said C. D. into Court as aforesaid (the  
payment of which sum the said A. B. hereby acknowledges)], the  
said A. B., As Beneficial Owner, hereby conveys and the Board  
hereby confirms (*r*) unto the said C. D.

ALL, &c. (*see Forms in Sect. II., Purch. Deeds, sup.*) [and all Parcels.  
the mines and minerals in and under the said lands (*s*)],

To HOLD unto and To THE USE of the said C. D. in fee simple. Habeendum.  
freed and discharged from all rents, fines, suits and services,  
and other incidents of copyhold tenure (*t*).

(*Add Form No. 11, Sect. III., Purch. Deeds, sup.*)

IN WITNESS, &c.

#### No. IV.

#### DEED of ENFRANCHISEMENT by ECCLESIASTICAL COMMISSIONERS of COPYHOLDS for lives (*u*).

THIS INDENTURE, made, &c., BETWEEN the Ecclesiastical Com- Parties.  
missioners for England (hereinafter called the Commissioners)

(*r*) The confirmation under the seal of the Board of an award of enfranchisement and their execution of a deed of enfranchisement are conclusive evidence that the requirements of the Act have been complied with: s. 61.

(*s*) The mines and minerals will not pass, unless expressly included, see s. 23.

(*t*) A grant to the tenant of commonable rights is unnecessary, as they are expressly saved by s. 22.

Under s. 62 any person who has obtained enfranchisement under the Act may inspect and take copies of the court rolls on payment of a fee. Production of court rolls.

Under s. 64 the lord may, after all the copyholds of the manor have been enfranchised, hand over the court rolls to the Board or to the Master of the Rolls.

(*u*) The Episcopal and Capitular Estates Act, 1851 (14 & 15 Viet. c. 104), s. 1, authorised ecclesiastical corporations to make enfranchisements, and the enabling provisions of that Act have, by the Ecclesiastical Corporations Leases Act, 1861 (24 & 25 Viet. c. 105), been extended to rectors, vicars, perpetual curates and incumbents. The Ecclesiastical Leasing Act, 1858 (21 & 22 Viet. c. 57), conferred powers on ecclesiastical corporations with

of the one part, and A. B., of, &c. (*copyholder*), of the other part :

Recitals.

Grant by copy  
of court roll to  
A. B. for lives.

WHEREAS at a court holden in and for the Manor of —, in the County of —, on, &c. (*date*), the Dean and Chapter of the Cathedral Church of —, at —, lords of the said Manor, granted unto the said A. B. (*parcels as described in court rolls*), To Hold the same unto the said A. B. and his heirs for and during the lives of —, and the lives and life of the longest livers and liver of them, at and under the yearly rent of £—, and the heriots, suits and services therefor due and of right accustomed, and the said A. B. was thereupon admitted tenant to the said hereditaments : (*If necessary add recitals showing the devolution of the interest acquired under the grant for lives.*)

Order in  
Council  
transferring  
capitular  
estates to  
Ecclesiastical  
Commissioners.

AND WHEREAS under or by virtue of the several Acts of Parliament relating to the Commissioners and an Order in Council dated the — day of —, and published in the London Gazette on the — day of —, ratifying a scheme of the Commissioners recited in the said Order, ALL the manors, lands, tithes and hereditaments which then belonged either in possession or reversion to the said Dean and Chapter (with certain exceptions not affecting the said Manor of —) became vested in the Commissioners :

Order in  
Council  
empowering  
Ecclesiastical  
Commissioners  
to dispose of  
property.  
Agreement for  
enfranchise-  
ment and sale.

AND WHEREAS by an Order in Council dated, &c., and published, &c. (*Recite Order in Council authorising Ecclesiastical Commissioners to dispose of the property vested in them under previous Order*) :

AND WHEREAS the Commissioners have agreed with the said A. B. for the enfranchisement and sale to him of the hereditaments hereinafter described (being the hereditaments to which the said A. B. was admitted tenant on the — day of — as aforesaid) at the price of £— :

Conveyance.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £ — paid by the said A. B. into the Bank of England to the credit of the Commissioners, as appointed by them in that behalf (the receipt whereof is intended to be acknowledged by a memorandum indorsed hereon, and the payment whereof the

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some exceptions and with the approval of the Ecclesiastical Commissioners, and also with certain consents to sell, &c.

Commissioners hereby acknowledge), the Commissioners, As Parcels.  
Trustees, hereby enfranchise and convey unto the said A. B.

ALL, &c. (*parcels by reference to a schedule, with minerals and re-grant of commonable rights, as in Precedent I.*).

To HOLD unto and To THE USE of the said A. B. in fee simple, Ha bendum.  
henceforth and for ever freed and discharged from all rents, heriots, fines, suits, services and other incidents of copyhold tenure. (*Add Form No. 11, Sect. III., Purchase Deeds, sup., if required.*)

IN WITNESS whereof the Commissioners have hereunto set their common seal the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

No. V.

RELEASE *by* COPYHOLDER, *a Trustee for the Tenant for Life of the Manor, for the purpose of* EXTINGUISHING the COPYHOLD INTEREST.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (here- Parties.  
inafter called the Copyholder), of the 1st part, C. D., of, &c. (*tenant for life and lord of the Manor*), of the 2nd part, and X., of, &c., and Y., of, &c. (hereinafter called the Trustees), of the 3rd part :

WHEREAS at a General Court Baron of the Manor of —, Admittance of  
in the County of —, E. F. was on the — day of — testator.  
admitted tenant to the copyhold hereditaments hereinafter described, To hold to him and his heirs according to the custom of that Manor:

AND WHEREAS the said E. F. duly made his Will dated, &c., Will directing  
and thereby, after appointing his wife, G. F., to be his executrix, copyholds to be sold.  
directed her to sell all his copyhold hereditaments and apply the net proceeds as therein mentioned (*Recite death of testator and probate*):

AND WHEREAS by an Indenture of Bargain and Sale dated Bargain and  
&c., and made between the said G. F. of the 1st part, the Sale of copy-  
said C. D. (*lord of the Manor*) of the second part, and the holds by  
Copyholder of the 3rd part (duly enrolled on the court rolls of executrix  
to Trust-ee for  
lord of the

Manor to keep  
alive the copy-  
hold interest.

the said Manor) in consideration of the sum of £—— paid by the said C. D. to the said G. F. out of his own money, the said G. F., in exercise of the power for that purpose given to her by the said Will, bargained and sold the copyhold hereditaments hereinafter mentioned unto the Copyholder and his heirs, To be held according to the custom of the said Manor by and under the rents and services therefor due and of right accustomed, In trust, nevertheless, for the said C. D., his heirs and assigns :

Admission  
pursuant to  
Bargain and  
Sale.

AND WHEREAS on the —— day of —— the Copyholder was out of court admitted to him and his heirs to the copyhold hereditaments, parcel of the said Manor, so bargained and sold as aforesaid, to wit ALL, &c., (*set out the parcels on the court rolls*), of which hereditaments the lord of the said Manor by his steward granted seisin by the rod :

Settlement of  
the Manor.

AND WHEREAS by an Indenture of Settlement dated, &c., and made, &c., the said Manor (with other hereditaments) was appointed To the Use of the said C. D. during his life without impeachment for waste, with divers remainders over, And the Trustees were by the said Settlement appointed to be the trustees thereof for all the purposes of the Settled Land Acts, 1882 to 1890 :

Agreement by  
Trustees to  
purchase the  
copyholds  
from the  
tenant for life.

AND WHEREAS the Trustees, in exercise of the powers for this purpose conferred by section twelve of the Settled Land Act, 1890, have agreed with the said C. D. for the purchase of the said copyhold hereditaments at the price of £——, which sum is to be paid out of capital money in their hands arising under the said Acts as the Trustees of the recited Settlement :

Release of  
copyholds to  
the lord of the  
Manor.

NOW THIS INDENTURE WITNESSETH (*x*) that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Trustees out of such capital money as aforesaid to the said C. D. (the receipt of which sum the said C. D. hereby acknowledges), the Copyholder, As Trustee, and by the direction of the said C. D. directing As Beneficial Owner, hereby conveys and releases unto the said C. D., his heirs and successors in title, as lord of the said manor

Parcels.

ALL the premises expressed to be comprised in the recited

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(*x*) The release must be by deed, and not by surrender; it should be enrolled on the court rolls.

Bargain and Sale and to which the copyholder was admitted as aforesaid,

TO THE INTENT (y) that the customary estate in the premises may merge and be extinguished in the fee simple of the said Manor of —, of which the premises are parcel, and that the premises may no longer be granted out to be held by copy of court roll (z).

Extinguishment of copyhold interest.

IN WITNESS, &c.

#### SECTION IV.

### ENLARGEMENT OF TERM DEEDS.

#### No. I.

DEED to CONVERT a LONG TERM of YEARS into a FEE SIMPLE by a person ABSOLUTELY ENTITLED thereto (a).

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., SENDS GREETING this — day of — :

WHEREAS by an Indenture dated, &c., and made, &c. (*date and parties*), ALL, &c. (*parcels as in recited deed*), were demised unto the said — from the — day of — for a term of 1,000 years thence next ensuing at a peppercorn rent :

Recite demise for long term subject to nominal rent.

AND WHEREAS, after divers mesne assignments and acts in the law, ultimately under an Indenture dated, &c., and made, &c. (*date and parties*), the premises became vested in the said A. B. for the residue of the said term, which is not liable to be determined by re-entry for condition broken :

Mesne assignments.

NOW THESE PRESENTS WITNESS THAT the said A. B., by virtue of section sixty-five of the Conveyancing and Law of Property Act, 1881, hereby declares that the said

Enlargement by owner of term into fee simple.

(y) No uses or habendum are required, for the manor is already settled.

(z) No new copyholds can be created without the consent of the Board of Agriculture and Fisheries: Cop. Act, 1894, s. 81. As to redemption of quit rents, see Conv. Act, 1881, s. 45.

Creation of new copyholds; redemption of quit rents.

(a) See Conv. Act, 1881, s. 65; Conv. Act, 1882, s. 11; Wolst. Conv. Acts, 9th ed., 128—133; *Blalberg v. Keeses*, 1906, 2 Ch. 175; 75 L. J. Ch. 464; and see also 49 Sol. J. 818. The deed should be stamped 10s.

term of 1,000 years shall from and after the execution of these presents, as to all the premises therein comprised, be and the same is hereby enlarged into a fee simple.

IN WITNESS, &c.

## No. II.

DEED to CONVERT *a LONG TERM of YEARS into a FEE SIMPLE by a MORTGAGEE who has become ABSOLUTE OWNER by ADVERSE POSSESSION.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., SENDS GREETING this — day of — :

Recite mortgage for long term ;

WHEREAS by an Indenture of Mortgage dated, &c., and made between L. M. of the one part, and the said A. B. of the other part, certain hereditaments situated in the Parish of —, in the County of —, were demised by the said L. M. to the said A. B. for the term of 500 years from the date thereof without impeachment for waste by way of mortgage for securing payment by the said L. M. to the said A. B. of the sum of £400 and interest as therein mentioned :

that mortgage debt was not paid, and that mortgagee took possession and acquired absolute title to term by adverse possession.

AND WHEREAS, no part of the said mortgage debt of £400 having been paid, the said A. B. entered into possession of the premises in the year —, and has ever since remained in uninterrupted possession and enjoyment thereof, without having acknowledged the title of the said L. M. or any other person to any right of redemption, and the said A. B. has consequently become the absolute owner of the premises for the residue of the said term of 500 years :

Enlargement of the said term by mortgagee who has become absolute owner into fee simple.

NOW THESE PRESENTS WITNESS THAT the said A. B., by virtue of section sixty-five of the Conveyancing and Law of Property Act, 1881, hereby declares that the said term of 500 years shall from and after the execution of these presents, as to all the premises therein comprised, be and the same is hereby enlarged into a fee simple.

IN WITNESS, &c.

## No. III.

DEED to CONVERT a LONG TERM of YEARS into a FEE SIMPLE by a MARRIED WOMAN having an EQUITABLE ESTATE for LIFE for her SEPARATE USE without POWER of ANTICIPATION (b).

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., the wife of C. B., of, &c., SENDS GREETING this — day of — (*Recite lease for 700 years*) :

Recite lease for 700 years.

AND WHEREAS N. O., late of, &c., having become entitled to the premises for the residue of the said term, duly made his Will dated the — day of —, and thereby gave all his real and personal estate to P. Q. and R. S. Upon trust for the testator's daughter, the said A. B., during her life [for her separate use], without power of anticipation, with remainders over, and the said testator appointed the said P. Q. and R. S. executors of his said Will (*Recite death of testator and probate of the Will*) :

Will of owner of term.

NOW THESE PRESENTS WITNESS as follows :—

1. THE said A. B., by virtue of section sixty-five of the Conveyancing and Law of Property Act, 1881, hereby declares that the said term of 700 years shall from and after the execution of these presents, as to all the premises therein comprised, be and the same is hereby enlarged into a fee simple.

Enlargement by married woman of term into fee simple.

2. THE said A. B. hereby directs that the said P. Q. and R. S. shall stand possessed of the premises so enlarged into a fee simple, Upon the trusts by the recited Will declared of the real estate of the said testator (c).

Direction to hold as real estate.

IN WITNESS, &c.

(b) See Conv. Act, 1881, ss. 2 (iii.); 65 (2) (i.), (3). If the term were vested in the trustees on trust for sale, they would be the persons to make the declaration: sub-s. (2) (ii.). This deed does not require acknowledgment by the married woman, or the concurrence of her husband. If the testator died after 1882, or the marriage took place after that year, there would be no need for an express trust for her separate use.

Trustees holding on trust for sale.

(c) If the limitations of the freeholds devised by the Will were legal, then the trustees ought to convey the land to the uses of the Will.

## No. IV.

DEED to CONVERT a LONG TERM of YEARS into a FEE SIMPLE  
by HUSBAND AND WIFE (*d*).

TO ALL TO WHOM THESE PRESENTS SHALL COME,  
A. B., of, &c., and C. B., his wife, SEND GREETING this — day of  
— (*Recite creation of term for 700 years and other recitals  
showing that it became vested in C. B. before 1883, and that  
C. B. married before that date*):

Enlargement  
by husband  
and wife of  
long term into  
fee simple.

NOW THESE PRESENTS WITNESS THAT the said A. B. and  
C. B., his wife, by virtue of section sixty-five of the Conveyancing  
and Law of Property Act, 1881, hereby declare that the said  
term of 700 years shall from and after the execution hereof, as  
to all the premises therein comprised, be and the same is hereby  
enlarged into a fee simple.

IN WITNESS, &c.

## No. V.

DEED to ENLARGE a LONG TERM as to PART of the DEMISED  
PROPERTY by the TENANT FOR LIFE of SETTLED LAND (*e*),  
and CONVEYANCE to the USES of the SETTLEMENT.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*tenant for  
life*), of the one part, and X., of, &c., and Y., of, &c. (hereinafter  
called the Trustees), of the other part (*Recite deed creating portions  
term of 1,000 years, mortgage of same to C. D., order for fore-  
closure, Settlement of other land to the use of A. B. for life, with  
remainders over, whereof the Trustees are S. L. Act trustees, that  
these presents are supplemental to an Indenture (hereinafter called  
the Principal Indenture) dated, &c., being an assignment on a sale  
by C. D. of part of the premises comprised in the term to the  
Trustees on trusts corresponding to the uses declared by the  
Settlement*):

(*d*) This deed does not require acknowledgment by the married woman.  
It is assumed that no settlement or agreement for a settlement has been  
made affecting the term.

(*e*) See Conv. Act, 1881, s. 65; Conv. Act, 1882, s. 11.

AND WHEREAS the said A. B. is now tenant for life in possession under the recited Settlement, and beneficially entitled (*f*) in right of the term of 1,000 years created by the said Indenture of the, &c., to the possession of the part of the lands and hereditaments comprised in that term, which was by the Principal Indenture conveyed to the Trustees for the residue of that term Upon the trusts of the recited Settlement:

Recital that A. B. is tenant for life;

AND WHEREAS the ultimate beneficial interest in the premises comprised in the Principal Indenture has not become absolutely and indefeasibly vested in any person, but the said A. B. is contingently entitled thereto under the ultimate limitation contained in the recited Settlement, and has not made any conveyance for value thereof (*g*):

That no tenant in tail has attained twenty-one.

NOW THIS INDENTURE WITNESSETH as follows:—

1. THE said A. B., as the person so beneficially entitled, hereby declares that from and after the execution of these presents the said term of 1,000 years shall (so far as regards the lands and hereditaments comprised in the Principal Indenture) be and the same is hereby enlarged into a fee simple.

Enlargement of term.

2. For settling the said fee simple so acquired by enlargement in the manner in which the same is liable to be settled, the Trustees, As Trustees, hereby convey unto the said A. B.

Conveyance to uses.

ALL the lands and hereditaments which by the Principal Indenture were conveyed unto the Trustees for the residue of the said term of 1,000 years, and which under the declaration hereinbefore contained have become vested in them for an estate in fee simple (*h*),

Parcels.

To HOLD unto the said A. B. in fee simple, To THE USES, Upon the trusts, and subject to the powers and provisions which under the recited Settlement or by reason of the exercise of any power of charging therein contained are now subsisting with respect

Habendum.

(*f*) See s. 65 (2) (i.).

(*g*) See s. 65 (5). If any person has become absolutely entitled, or it is not known whether the person contingently entitled has made any conveyance for value of his contingent interest, the second witnessing part should be omitted.

(*h*) See s. 65 (3).

to freehold hereditaments settled by the recited Settlement, but not so as to increase or multiply charges or powers of charging (*i*).

IN WITNESS, &c.

## No. VI.

DEED to ENLARGE a LONG TERM into a FEE SIMPLE by  
EXECUTORS of DECEASED OWNER as to PART of the DEMISED  
PROPERTY (*k*), subject to INCUMBRANCES.

TO ALL TO WHOM THESE PRESENTS SHALL COME,  
X., of, &c., and Y., of, &c., SEND GREETING this — day of — :

Recitals.  
That deed  
supplemental  
to assignment  
to testator.

WHEREAS these presents are supplemental to an Indenture (hereinafter called the Principal Indenture) dated, &c., and made between M. of the one part and A. B. (since deceased) of the other part, whereby ALL THOSE, &c. (*short description*), were assigned unto the said A. B. for the residue of a term of 500 years created therein, and also in other lands and hereditaments by an Indenture of Lease dated, &c., and made, &c., at a pepper-corn rent payable in respect of all the demised premises :

Death of  
testator and  
appointment  
of executors.

AND WHEREAS the said A. B. died on, &c., being at his death entitled to the premises comprised in the Principal Indenture for the residue of the said term subject to the incumbrances created by him and mentioned in the Schedule hereto, and having by his Will dated, &c., appointed the said X. and Y. executors thereof, who proved the same in the — District Probate Registry on, &c., And the said term of 500 years is now vested in the said X. and Y., as the Personal Representatives of the said A. B., so far as regards the premises comprised in the Principal Indenture, subject only to the incumbrances mentioned in the Schedule hereto (*l*) :

Stamp.

(*i*) Where a declaration enlarging a long term is contained in a conveyance or other instrument requiring a stamp, it must bear a further stamp of 10s. in respect of the declaration.

(*k*) See Conv. Act, 1881, s. 65 ; Conv. Act, 1882, s. 11.

(*l*) See s. 65 (2) (iii.). If the incumbrances were by sub-demise, then the sub-terms will remain. If the head term was vested in an incumbrancer, then the fee simple will vest in him : sub-s. 3.

NOW THESE PRESENTS WITNESS that the said X. and Y., as such Personal Representatives as aforesaid, do and each of them doth hereby declare that from and after the execution hereof the said term of 500 years shall, so far as regards the lands and hereditaments comprised in the Principal Indenture, be and the same is hereby enlarged into a fee simple (*m*). Enlargement  
by executors.

IN WITNESS, &c. (*Add Schedule of incumbrances.*)

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(*m*) The executors take in that character, under s. 65 (4), the like powers of selling and conveying the fee simple acquired by the deed in the text as they had as executors of selling and assigning the term previous to its enlargement.

## B.—DISSERTATION ON MORTGAGES.

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SECT. I.—*The usual form of a mortgage of freehold, copyhold, and leasehold property respectively.*

Ordinary form  
of mortgage  
of freeholds.

A MORTGAGE is a conveyance of property to secure the payment of money or money's worth. Its ordinary form is a conveyance by the mortgagor to the mortgagee, subject to a proviso for a reconveyance on payment of the money intended to be secured on a day named, which is usually six months from the date of the deed. The conveyance is preceded or followed by covenants by the mortgagor with the mortgagee for payment of principal and interest on the appointed day, and if the principal is not paid on that day, for the future payment of interest half-yearly. Under the latter covenant arrears of interest can be sued for without requiring payment of the principal. If the property consists of houses or buildings, there should be a covenant for insurance against fire.

Ordinary form  
of mortgage of  
copyholds.

A mortgage of copyholds is usually effected by: (1) a deed whereby the mortgagor covenants to surrender the copyholds to the use of the mortgagee, subject to a condition for making the surrender void on payment of principal and interest on a given day, which deed also contains covenants for payment of principal and interest, and for insurance (if necessary), similar to those in a mortgage of freeholds; and (2) a conditional surrender in accordance with the covenant in the deed. The mortgagee is seldom admitted till a sale is effected, as that would involve the payment of a fine and would render the mortgagee liable to the customary services; it would also involve the necessity of a re-admission of the mortgagor on the mortgage being paid off.

Admission on  
conditional  
surrender,  
not usual.

On the repayment of the mortgage-money, the mortgagee, if he has not been previously admitted, usually gives a warrant to the steward to enter up satisfaction of the conditional surrender, and executes a release by deed to the mortgagor of the mortgaged property.

On a transfer of the mortgage, if the mortgagor is not a party, then the mortgagee must be admitted before he can surrender to the transferee. If the mortgagor is a party, satisfaction can be entered up of the conditional surrender and a new one given.

Mortgages of leaseholds are made either by assignment for all the term and interest of the mortgagor, or by underlease for the term except the last few days. The latter course is generally adopted where the rent reserved by the lease is more than nominal, or the covenants are onerous; for, if the mortgagee takes an assignment, a privity is established between him and the lessor, and he may be sued for the rent or for a breach of the covenants.

Mortgage of leaseholds by assignment or sub-demise.

Formerly a mortgage by sub-demise was open to the objection that the head lease might become forfeited by the act or default of the mortgagor, but this risk is now met by the Conv. Act, 1892, s. 4, which enables the Court in such a case to vest the property in the mortgagee as underlessee subject to certain conditions (a).

On breach involving forfeiture, head lease may be made to vest in mortgagee by sub-demise.

It was formerly the practice to insert in a mortgage by sub-demise a declaration that after a sale under the power of sale the mortgagor should hold the head term in trust for the purchaser. This enabled a purchaser to call on the mortgagor to assign to him the head term, and, in default of his doing so, to obtain a vesting order from the Court. It is now considered that such a declaration is incomplete, because it does not apply to a foreclosure as well as to a sale. The present practice is to make the mortgagor declare himself a trustee of the head term in trust for the mortgagee subject to the right of

Declaration of trust of head term.

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(a) See Wolst. Conv. Acts, 9th ed., 181, 182.

Supplemented  
by power of  
attorney, and  
power to  
appoint new  
trustee.

redemption. It is also usual to supplement the declaration of trust by (1) an appointment of the mortgagee as the attorney of the mortgagor to assign the head term on his behalf, and (2) a power for the mortgagee for the time being to appoint a new trustee of the head term in the place of the mortgagor, and to remove the mortgagor from being a trustee. The latter power is intended to be used, if for any reason the power of attorney has become incapable of being exercised. Under it, the mortgagee can appoint a nominee of his own to be a trustee, and at the same time make a declaration under the Trustee Act, 1893, s. 12 (1), vesting the head term, which is the subject of the trust, in the new trustee (*b*).

Form of  
mortgage  
when mort-  
gagees are  
trustees.

When the mortgagees are trustees, the trust should not as a general rule be disclosed, as such a disclosure would make the trust instrument a necessary part of the title to the land. The proper course is to state that the money is advanced on a joint account. Such a statement enables the survivors or last survivor or the personal representatives of the last survivor to give a valid discharge for the money (*c*), and will keep the trust off the title (*d*), but it does not alter the rights of the mortgagees *inter se*, so that if the money in fact belonged to them as tenants in common they will, as between themselves, be tenants in common of the money secured (*e*). A payment to one of several mortgagees who have advanced money on a joint account, though a good discharge of the debt at law, does not discharge the security in equity, except to the extent of the payee's beneficial interest (if any) (*f*). Trustees are not necessarily liable for not insisting upon the insertion in a mortgage to themselves of a covenant to repair, or of a clause precluding the borrower from granting occupation

(*b*) *London and Coy. Bank v. Goddard*, 1897, 1 Ch. 642; 66 L. J. Ch. 261.

(*c*) Conv. Act, 1881, s. 61.

(*d*) *Re Harman and Uxbridge, &c. Ry. Co.* (1883), 24 Ch. D. 720; 52 L. J. Ch. 808; *Carritt v. Real, &c. Advance Co.* (1889), 42 Ch. D. at p. 272; 58 L. J. Ch. 688; Dart, 7th ed., 17; and *cf.* *Re Blauberg and Abrahams*, 1899, 2 Ch. 340; 68 L. J. Ch. 578.

(*e*) *Re Jackson* (1887), 31 Ch. D. 732; 56 L. J. Ch. 593.

(*f*) *Powell v. Brodhurst*, 1901, 2 Ch. 160; 70 L. J. Ch. 587.

leases, or for neglecting to inspect the property during the subsistence of the security (*g*).

It is not unusual, with a view to secure the punctual payment of interest, to provide for its payment, in the first instance, at a higher rate than is intended to be taken, with a proviso reducing it to the stipulated rate, in case of punctual payment on the proper half-yearly day, or within a short time (generally thirty days) thereafter. It would seem the more direct plan to make the interest payable, in the first instance, at the stipulated rate, and to provide for an increased rate in default of punctual payment. But such a provision would not answer the purpose, as it would be regarded in the light of a penalty and be relieved against (*h*). Under the usual proviso reducing the rate of interest on punctual payment, a mortgagee in possession may charge the mortgagor with the higher rate, though he receives rent more than sufficient to pay the interest, and even though no interest was in arrear at the time of his taking possession (*i*). A proviso for capitalization of interest, if in arrear for twenty-one days, does not, however, take effect if the mortgagee in possession receives sufficient rent before the twenty-one days have expired (*j*).

Provision for reducing rate of interest on punctual payment.

Capitalization of interest.

Sometimes it is stipulated, particularly where the loan is one of a large amount, that the loan shall remain on the security for a term certain. This is usually effected by making the principal money payable, in the first instance, at the usual time, with provisions, first, that the mortgagee shall not call in the money before the end of the term agreed on, if the interest is punctually paid, and the mortgagor's covenants (if any) are duly performed in the meantime; and, secondly, that the mortgagor shall not be at liberty to pay off the money before the end of the term agreed on, unless the mortgagee shall be willing to receive it.

Provision for continuing loan for a term certain.

(*g*) *Shaw v. Cates*, 1909, 1 Ch. 389; 78 L. J. Ch. 226.

(*h*) *Nicholls v. Maynard* (1747), 3 Atk. 519.

(*i*) *Union Bk. v. Ingram* (1880), 16 Ch. D. 53; 50 L. J. Ch. 74; *Bright v. Campbell* (1889), 41 Ch. D. 388; see, *Wrigley v. Gill*, 1906, 1 Ch. 265; 75 L. J. Ch. 210.

(*j*) *Wrigley v. Gill*, *sup.*

Repayment by instalments.

A similar plan should be adopted where the arrangement is that the money shall be repaid by instalments.

Covenants for title are in a mortgage absolute. Statutory covenant.

It has always been the practice to make the mortgagor enter into absolute covenants for title, and by virtue of the Conv. Act., 1881, s. 7, such covenants are now implied in every conveyance by way of mortgage where the mortgagor conveys, and is expressed to convey, as beneficial owner.

Mortgage should contain covenant to insure, and to produce policy and receipts to mortgagee.

Having regard to the statutory provisions as to insurance where the mortgage is by deed (*k*), a mortgage deed comprising buildings should as a general rule contain a covenant by the mortgagor to insure to the amount considered necessary, and to deliver or produce the policy and the receipt to the mortgagee on demand; but it is unnecessary to insert any further provision enabling the mortgagee to insure in case of the mortgagor's default, as this is provided for.

Attornment clause, to what extent void under Bills of Sale Act.

It was formerly usual, when the mortgagor was in actual occupation of the mortgaged property, to make him attorn tenant to the mortgagee at a rent at least equal to the interest, so as to enable the latter to distrain for such interest as rent; but it is now provided by the Bills of Sale Act, 1878, s. 6, as follows:—

Every attornment instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance or otherwise for the purpose of such security only shall be deemed to be a bill of sale within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress. Provided that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

The exception in the proviso at the end of the above section does not apply to a case where the attornment clause is inserted

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(*k*) Conv. Act, 1881, ss. 19 (1) (ii.), 23.

in the mortgage itself, but only to one where a mortgagee takes possession after the mortgage and then demises to the mortgagor (*l*).

An attornment clause in an unregistered deed of mortgage is therefore void so far as it gives power to distrain personal chattels, but, so far as it creates the relation of landlord and tenant, is valid; and if it reserves power to the mortgagee to determine the tenancy at any time, he may (*m*) obtain a summary judgment for the recovery of the land under O. 14, or a writ specially indorsed under O. 3, r. 6 (F). The clause is, therefore, still useful where the mortgagor is in possession, as it enables the mortgagee to oust him and go into possession, and its insertion is recommended, substituting, however, a nominal for a substantial rent.

To what extent valid.

A mortgagee should make the same investigation of title and searches for incumbrances as a purchaser. He should also satisfy himself as to the value of the property and as to tenants and occupiers. The ordinary rule is that the money advanced should not exceed two-thirds of the value in the case of freehold land, and in the case of house property half the value (*n*).

Investigation of title, searches, and inquiry as to value.

A mortgagee has a free hand, and if the security is not ample the investigation may be more strict than in the case of a purchaser. In any case the inquiries as to occupation should be carefully made.

## SECT. II.—*Equitable mortgages by deposit of title deeds.*

An equitable mortgage of land or other property may be created by an agreement in writing, or by a parol agreement accompanied or followed by a deposit of title deeds (*o*). The

Equitable mortgage by deposit of deeds.

(*l*) *Re Willis* (1888), 21 Q. B. D. 384; 57 L. J. Q. B. 634; *Green v. Marsh*, 1892, 2 Q. B. 330; 61 L. J. Q. B. 442.

(*m*) *Mumford v. Collier* (1890), 25 Q. B. D. 279; 59 L. J. Q. B. 552; *Kemp v. Lester*, 1896, 2 Q. B. 162; 65 L. J. Q. B. 532.

(*n*) As to the duty of trustees in this respect, see the Dissertation on Trustees in Vol. II.

(*o*) *Edge v. Worsington* (1786), 1 Cox, 211; *Ex parte Mountfort* (1808), 14 Ves. 606.

parol agreement by itself would, as regards land, be ineffective, as contrary to the Statute of Frauds, but the deposit is an act of part performance taking the case out of the statute (*p*).

A deposit of a material part of the deeds (*q*), or even of one old deed falsely stated to be the only deed, there being in fact many subsequent ones (*r*), has been held sufficient.

Where there is a deposit of deeds on an advance, the Court will presume an agreement that an equitable mortgage was intended, but the mere production by a creditor of title deeds without explanation or evidence to show any connexion between the deed and the possession of the title deeds is insufficient (*s*).

A deposit of title deeds is *prima facie* a security only for the amount then due, but it may be extended to future advances either by evidence that there was a parol agreement at the time that it should be so extended, or by evidence that the further advance was made on the security of the deeds (*t*).

An equitable mortgagee, by deposit of a lease, cannot be compelled by the lessor to take a legal assignment, and does not become liable to him in respect of the rent and covenants in the lease, although he may have taken possession or paid rent (*u*).

SECT. III.—*The rights and remedies of mortgagor and mortgagee as regards redemption, foreclosure, and judicial sale, and the powers of a mortgagor in possession.*

If, as is usually intended, the money is not paid at the time appointed in the proviso for redemption, the estate of the mortgagee becomes absolute at law; but the Court,

(*p*) *In re Beetham* (1887), 18 Q. B. D. 766; 56 L. J. Q. B. 635.

(*q*) *Lacon v. Allen* (1856), 3 Drew. 579; 26 L. J. Ch. 18; *Roberts v. Croft* (1857), 2 De G. & J. 1; 27 L. J. Ch. 220.

(*r*) *Dixon v. Muckleston* (1872), L. R. 8 Ch. 155; 42 L. J. Ch. 210.

(*s*) *Chapman v. C.* (1851), 13 Beav. 308; 20 L. J. Ch. 465.

(*t*) *Ex p. Whitbread* (1812), 19 Ves. 209; *Ex p. Kensington* (1813), 2 V. & B. 79; *Ex p. Hooper* (1815), 1 Mer. 9.

(*u*) *Moore v. Grey* (1848), 2 Phil. 717; 18 L. J. Ch. 15; *Friary Holroyd, &c. Breweries v. Singleton*, 1899, 1 Ch. 86, 90 (reversed on facts, 1899, 2 Ch. 261); 68 L. J. Ch. 13, 622.

When a  
deposit covers  
future  
advances.

Effect of  
deposit of  
lease.

Right of  
mortgagor to  
redeem.

in the exercise of its equitable jurisdiction, enables the mortgagor at any time to redeem on payment to the mortgagee of the principal and interest due, together with the costs properly incurred by him, in relation to the security; hence the estate of the mortgagor, after the day has passed without payment, is called an equity of redemption. The right of redemption may be barred by foreclosure.

A mortgagee of land, whether legal or equitable, may at any time after the day named for payment in the mortgage deed commence an action claiming foreclosure. The Court will thereupon order an account to be taken of the amount due, and will name a time at the end of which, if the money is not paid, the mortgagor will be foreclosed. This time will, however, be enlarged in certain cases. After an order absolute for foreclosure has been made, the mortgagee becomes absolute owner in equity, as well as at law, of the mortgaged property. In the case of an equitable mortgage, the judgment will order the mortgagor to convey the legal estate (*x*). Foreclosure.

Under Conv. Act, 1881, s. 25, an order for sale may be obtained in an action for redemption or foreclosure. Sale in action for redemption or foreclosure.

The power of ordering a sale conferred on the Court by the above enactment applies to equitable as well as to legal mortgages (*y*), and may be exercised at any time before foreclosure (*z*). The Court can order a sale on the application of a subsequent mortgagee without the consent of prior ones, and can give the conduct of the sale to the subsequent mortgagee, but will in such a case fix a reserved price of such

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(*x*) *James v. J.* (1873), 16 Eq. 153; 42 L. J. Ch. 386. The right of foreclosure does not extend to a pledge of personal chattels, the remedy in respect to which is sale: *Carter v. Wake* (1877), 4 Ch. D. 605; 46 L. J. Ch. 841; but does extend to a deposit of share certificates: *Harrold v. Plenty*, 1901, 2 Ch. 314; 70 L. J. Ch. 562.

(*y*) *Wade v. Wilson* (1883), 22 Ch. D. 235; 52 L. J. Ch. 399; *Oldham v. Stringer* (1884), W. N. 235; 51 L. T. 895; *Green v. Biggs* (1885), W. N. 128; 52 L. T. 680.

(*z*) *Union Bank v. Ingram* (1882), 20 Ch. D. 463; 51 L. J. Ch. 508; *Davis v. Wright* (1886), 32 Ch. D. 220.

an amount as will be sufficient to cover the sum due on the prior mortgages (*a*). The Court may also give the conduct of the sale to a mortgagor, or allow him to sell out of Court, although the mortgagee has given him notice requiring payment (*b*).

Mortgagee entitled to six months' notice or six months' interest.

Rule does not apply to equitable mortgage.

A mortgagor seeking to redeem after the day appointed in the proviso for redemption must give to the mortgagee six months' notice of his intention to pay off the debt, or pay him six months' interest in lieu of notice (*c*). But it has been held that this rule does not apply to an equitable mortgage by deposit (*d*).

If a mortgagee takes proceedings to realise his security, he is bound to accept the principal money and costs with interest up to the time of payment, and cannot claim further interest in lieu of the six months' notice (*e*). And this applies to a mortgagee entering into possession (*f*). But in a case where the mortgage was of a reversionary interest in a trust fund, and the trustees, on its falling into possession, petitioned the Court that the mortgage debt should be paid out of the fund, it was held that the ordinary rule applied, and the mortgagee was entitled to six months' notice or six months' interest (*g*). And where in an administration action (not instituted by the mortgagee) an order is made for sale free from the incumbrances of those who consent to the sale, and a mortgagee consents, he is entitled to six months' interest from the date of his consent, and if the sale does not take place within the six months then to further interest up to the time of payment (*h*).

Costs of preparing mortgage cannot

A mortgagee may add to the mortgage debt all costs incurred

(*a*) *Woolley v. Colman* (1882), 21 Ch. D. 169; 51 L. J. Ch. 854.

(*b*) *Brewer v. Square*, 1892, 2 Ch. 111; 61 L. J. Ch. 516.

(*c*) *Browne v. Lockhart* (1840), 10 Sim. 420, 424; 9 L. J. Ch. 167.

(*d*) *Fitzgerald's Trustee v. Mellersh*, 1892, 1 Ch. 385; 61 L. J. Ch. 231.

(*e*) *Re Alcock* (1883), 23 Ch. D. 372; 49 L. T. 240.

(*f*) *Borill v. Endle*, 1896, 1 Ch. 648; 65 L. J. Ch. 542.

(*g*) *Smith v. S.*, 1891, 3 Ch. 550; 60 L. J. Ch. 694.

(*h*) *Day v. D.* (1862), 31 Beav. 270; 31 L. J. Ch. 806.

under or in relation to his security, but not the costs of negotiating the loan and preparing the mortgage deed. These, if not deducted from the money lent before it is handed over, as is usually done, are a simple contract debt due at common law from the mortgagor to the mortgagee (*i*).

be added to debt.

It sometimes happens that when a mortgagor comes to redeem, the mortgagee claims to be paid not only the money secured by the particular mortgage, but also the money secured by some other mortgage—in other words, to consolidate the two. The law as to consolidation applicable to mortgages made before 1882, is, that if a person makes two mortgages of different properties to the same person to secure different debts, or if the mortgages are in the first instance made to two different persons, and they subsequently become vested by transfer in the same person, the mortgagor cannot redeem one without the other, assuming that the time has come for redeeming both (*k*). The rule applies not only as against the mortgagor, but also as against a person to whom the mortgagor has conveyed the equity of redemption, although the conveyance is made before the mortgages become united in title (*l*); but the rule does not apply if the conveyance of the equity of redemption has been made previously to the mortgage of the other estate (*m*). The fact that equities of redemption, originally separate, have come into the same hands does not give a right to consolidate (*n*).

The law as to consolidation of mortgages before 1882.

By the Conv. Act, 1881, s. 17 :—

(1) “A mortgagor seeking to redeem any one mortgage shall by virtue of this Act be entitled to do so, without paying any money due under any separate mortgage made by him or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.”

The rule altered by Conv. Act, 1881.

(*i*) *Wales v. Carr*, 1902, 1 Ch. 860; 71 L. J. Ch. 483.

(*k*) *Pledge v. White*, 1896, A. C. 187; 65 L. J. Ch. 449.

(*l*) *Pledge v. White*, *sup.*

(*m*) *Sharp v. Rickards*, 1909, 1 Ch. 109; 78 L. J. Ch. 29.

(*n*) *Jennings v. Jordan* (1881), 6 A. C. 698; 51 L. J. Ch. 129; *Minter v. Carr*, 1894, 3 Ch. 498; 63 L. J. Ch. 705; *Hughes v. Britannia, &c. Society*, 1906, 2 Ch. 607; 75 L. J. Ch. 739.

This enactment applies only when the mortgage or one of them are or is made after 1881, and so far as a contrary intention is not expressed in them or one of them (*o*).

It follows that if a person, having mortgaged Blackacre, borrows from the same person a further sum on the security of Whiteacre, intending that the latter sum shall be charged on Blackacre also, the second deed should recite or refer to the first and expressly make both properties subject to both debts (*p*).

A stipulation in an equitable mortgage to execute a legal mortgage "in such form" as the mortgagor may require does not authorise the insertion of a clause excluding s. 17 (*q*).

When the equitable right to consolidate several mortgages exists, and the mortgagee, with a view to exercising his power of sale over the property comprised in one of the mortgages, gives the notice required by s. 20 of the Act, the right to consolidate is not thereby lost (*r*).

If a mortgagee of property lends a further sum to the mortgagor on the security of the same property, the mortgage cannot be redeemed without the further advance, and this rule applies to mortgages of equitable personalty as well as to mortgages of real estate (*s*).

All simple contract and specialty debts may be tacked to a mortgage debt as against the heir, devisee, or executor of a mortgagor, where the equity of redemption is assets (*t*); but not so as to give the mortgagee a preference over other creditors, where the assets are insufficient (*u*).

(*o*) Sub-ss. (2) and (3); see also Wolst. Conv. Acts, 9th ed., 66, 67, and *Re Salmon*, 1903, 1 K. B. 147; 72 L. J. K. B. 125.

(*p*) This is better than inserting in one or both of the deeds a clause in general terms negating the operation of s. 17 of the Act.

(*q*) *Farmer v. Pitt*, 1902, 1 Ch. 954; 71 L. J. Ch. 500.

(*r*) *Griffith v. Pound* (1890), 45 Ch. D. 553; 59 L. J. Ch. 522.

(*s*) *Watts v. Symes* (1851), 1 D. M. & G. 240; 21 L. J. Ch. 713.

(*t*) *Rolfe v. Chester* (1855), 20 Beav. 610; 25 L. J. Ch. 244; *Thomas v. T.* (1856), 22 Beav. 341; 25 L. J. Ch. 391; *Re Allen*, 1896, 2 Ch. 345; 65 L. J. Ch. 760.

(*u*) *Talbot v. Frere* (1878), 9 Ch. D. 568; 27 W. R. 148; *Re Greyson* (1887), 36 Ch. D. 223; 57 L. J. Ch. 326.

Mortgagee  
lending  
further sum  
to Mortgagor.

Simple con-  
tract and spe-  
cialty debts  
may be tacked  
to mortgage  
debt.

A further advance cannot be tacked to a prior legal mortgage upon the strength of a parol agreement to that effect (*x*).

All persons having an estate or interest in the equity of redemption are entitled to redeem (*y*). Consequently, the trustee of a bankrupt may redeem, as well as subsequent mortgagees and judgment creditors. So, also, a tenant under a lease granted by the mortgagor after the date of the mortgage, and not binding on the mortgagee, may redeem (*a*).

Persons  
entitled to  
redeem.

A mortgagee must accept payment of the mortgage debt from the mortgagor or any subsequent mortgagee, and either reconvey to him the mortgaged estate, or, if required (*b*), assign the mortgage debt and convey the mortgaged property to any third person.

Mortgagee on  
redemption  
must, if re-  
quired, trans-  
fer mortgage.

This rule does not apply to a mortgagee in possession, who can only safely transfer his security under the direction of the Court (*c*).

Sureties for the payment of the mortgage debt may also redeem; and if a mortgagee, after the surety has joined, advances a further sum to the mortgagor on a further charge of the property, the surety can redeem the mortgage without paying the further advance as well as the original sum (*d*). Where, however, distinct sums are advanced at the same time on distinct securities, and a third person becomes surety for one of the sums with knowledge of the whole transaction, the mortgagee will, except in cases coming within s. 17 of the Conv. Act, 1881, be entitled to consolidate both the debts, and retain the securities for them against the surety until both sums are paid (*e*).

Sureties.

(*x*) *Ex p. Hooper* (1815), 1 Mer. 7.

(*y*) *Pearce v. Morris* (1869), 5 Ch. 227; 39 L. J. Ch. 342.

(*a*) *Turn v. Turner* (1888), 39 Ch. D. 456; 57 L. J. Ch. 1085.

(*b*) Conv. Act, 1881, s. 15; Conv. Act, 1882, s. 12; Wolst. Conv. Acts, 9th ed., 61.

(*c*) *Hall v. Heward* (1886), 32 Ch. D. 430; 55 L. J. Ch. 604.

(*d*) *Forbes v. Jackson* (1882), 19 Ch. D. 615; 51 L. J. Ch. 690.

(*e*) *Furebrother v. Wodehouse* (1856), 23 Beav. 18; 26 L. J. Ch. 81, 240.

See *Nicholas v. Rüdley*, 1904, 1 Ch. 492; 73 L. J. Ch. 145.

Sale of equity  
of redemption.

On the sale of an equity of redemption the purchaser is not personally liable to the mortgagee (*f*), but should covenant to indemnify the vendor (*g*).

When a  
Mortgagor  
sells the equity  
of redemption,  
and the Pur-  
chaser borrows  
a further sum.

If A. mortgages to B., and then sells and conveys the equity of redemption to C., and C. afterwards further charges to B. for an additional advance, A. may be sued by B. on the covenant in the original mortgage deed, but if he pays, he is entitled to have the property conveyed to him without paying the further advance made by B. to C. In other words, he is entitled to what is in effect a transfer of the first mortgage (*h*).

Tenant for  
life.

Where an equity of redemption is settled, the tenant for life, or other limited owner in possession, has a right to redeem in preference to persons entitled in remainder, who cannot redeem without his consent (*i*); but, having redeemed, he cannot compel those in remainder to redeem him. He may make the remaindermen parties to a redemption suit instituted by him against the mortgagor, so that they may be present at the taking of the accounts; he must, however, pay the costs of such remaindermen, and add them to his mortgage, and on his death his representative may bring an action for foreclosure against the remaindermen (*k*).

When deemed  
a principal  
debtor.

Where a tenant for life joins in a mortgage of the settled land and covenants to pay principal and interest with a proviso making the mortgaged premises the primary security, but not so as to affect the rights of the mortgagee, the tenant for life is, as between himself and the mortgagee, not a surety, but a principal debtor (*l*).

Representative  
of Mortgagor.

The personal representative of a deceased mortgagor of real

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(*f*) *Re Errington*, 1894, 1 Q. B. 11.

(*g*) *Bridgman v. Daw* (1892), 40 W. R. 253.

(*h*) *Kinnaird v. Trollope* (1888), 39 Ch. D. 636; 57 L. J. Ch. 905.

(*i*) *Ravald v. Russell* (1830), Younge, 9; *Prout v. Cock*, 1896, 2 Ch. 808; 66 L. J. Ch. 24.

(*k*) *Riley v. Croydon* (1864), 2 Dr. & Sm. 293.

(*l*) *Nicholas v. Rölley*, 1904, 1 Ch. 192; 73 L. J. Ch. 145.

estate is not, except under the L. T. Act, 1897 (*ll*), entitled to redeem in that capacity (*m*).

By 4 & 5 W. & M. c. 16, it is provided that if any person having once mortgaged shall again mortgage, and shall not give to the second mortgagee notice in writing of the former mortgage, he shall have no relief or equity of redemption against such second mortgagee, and the second mortgagee shall hold the land freed from the equity of redemption, and as fully as if his mortgage had been an absolute purchase. The statute, being penal in its character, must be construed strictly, and neither an equitable mortgagee by deposit of title deeds, nor a mortgagee under a deed in the form of a further charge without a proviso for redemption, is a second mortgagee within the meaning of the Act; moreover, the Act confers no active remedy which can be enforced in equity (*n*).

Forfeiture of equity of redemption if Mortgagor makes second mortgage, concealing the first.

A mortgagor in possession is treated in equity as owner of the mortgaged property for most purposes, and he may exercise all ordinary acts of ownership. Thus, he may cut timber, unless the estate without the timber is a scanty security (*o*), and he may bring actions at law in his own name for the recovery of rents and profits, or to prevent or recover damages in respect of any trespass or other wrong relative to the mortgaged property, unless the cause of action arises on a lease or other contract made by him jointly with any other person (*p*). But he cannot re-enter for breach of covenants in a lease made before the mortgage (*q*).

Power of Mortgagor in possession.

A mortgagor in possession, where the mortgage is made after 1881, is empowered by the Conv. Act, 1881, s. 18, to make

Statutory power enabling Mortgagor in possession to grant leases.

(*ll*) *Re Harrowby and Paine*, 1902, W. N. 137.

(*m*) *Cutley v. Sampson* (1864), 31 L. J. Ch. 96.

(*n*) *Kennard v. Futcey* (1860), 2 Giff. 81; 29 L. J. Ch. 553. See also Law of Property Amendment Acts, 1859, s. 24, and 1860, s. 8, as to the liability of the fraudulent mortgagor to an action for damages.

(*o*) *King v. Smith* (1843), 2 Hare, 239.

(*p*) Jud. Act, 1873, s. 25 (5).

(*q*) *Matthews v. Usher*, 1900, 2 Q. B. 535; 69 L. J. Q. B. 856; *Molyneux v. Richard*, 1906, 1 Ch. 34, 43; 75 L. J. Ch. 39.

agricultural or occupation leases for any term not exceeding 21 years, or building leases for any term not exceeding 99 years, subject to certain conditions thereby prescribed. A lease under this power has the same effect as if the mortgagee had joined (*r*) and the mortgagor can sue on the covenants (*s*). Similar powers are given to the mortgagee in possession.

Benefit of Lessee's covenants passes to Mortgagee if he takes possession.

When a lease is granted under the statutory power and the rent is reserved to, and covenants are entered into with, the mortgagor as lessor, if the mortgagee afterwards takes possession, or gives notice to pay the rent to him, the right to such rent and to distrain for the same, or to sue on the covenants, will pass to him (*t*); the mortgagor cannot accept a surrender of a lease so granted without the consent of the mortgagee (*u*).

Mortgagor cannot accept surrender.

Occupation lease, what it includes.

An "occupation lease" within s. 18 may include a right of sporting over other land when such right has usually been granted with the land let (*v*), but not other property (*y*).

Mortgagor with power of leasing.

A mortgagor with an express power of leasing may not grant a lease to himself and probably not to a trustee for himself (*z*).

Mortgagor in possession may cut growing crops.

A mortgagor may cut and remove growing crops until possession has been demanded by the mortgagee, but not after such demand (*a*).

Mortgagor may inspect deeds.

The Conv. Act, 1881, s. 16, provides that a mortgagor, as long as his right to redeem subsists, is entitled, at his own cost, and on payment of the mortgagee's costs, to inspect and make copies of documents relating to the mortgaged property in the custody or power of the mortgagee. This section only applies

(*r*) *Wilson v. Queen's Club*, 1891, 3 Ch. 522; 60 L. J. Ch. 698.

(*s*) *Turner v. Walsh*, 1909, 2 K. B. 484; 78 L. J. K. B. 753.

(*t*) *Municipal &c. B. S. v. Smith* (1889), 22 Q. B. D. 70; 58 L. J. Q. B. 61.

(*u*) *Robbins v. Whyte*, 1906, 1 K. B. 125; 75 L. J. K. B. 38; and see Small Holdings, &c. Act, 1908, s. 39 (6).

(*v*) *Brown v. Peto*, 1900, 2 Q. B. 653; 69 L. J. Q. B. 869.

(*y*) *King v. Bird*, 1909, 1 K. B. 837; 78 L. J. K. B. 499.

(*z*) *Boyer v. Edbrooke*, 1903, 1 Ch. 836; 72 L. J. Ch. 547; but see *Bevan v. Halgood* (1860), 1 John. & H. 222; 30 L. J. Ch. 107.

(*a*) *Baguall v. Villar* (1879), 12 Ch. D. 812; 48 L. J. Ch. 695; *Re Gordon* (1889), 61 L. T. 299.

to mortgages made after 1881 and has effect notwithstanding any stipulation to the contrary (*b*).

Since the Usury Laws Repeal Act, 1854, a provision in a mortgage of a reversion or other property for capitalizing interest in arrear is valid (*c*). And a mortgagee may stipulate for a collateral advantage at the time and as a condition of the advance, provided that the right of redemption is not interfered with and the bargain is a fair and reasonable one entered into between the parties while on equal terms, without any improper pressure or unfair dealing. Thus, a stipulation that on the advance of (say) £700 the lender shall be repaid £1,000 at a future time, or that the lender may retain part of the money advanced as a bonus or commission, has been held valid (*d*). Also a provision that the borrower, being a publican, shall during the continuance of the security take all his beer from the lenders is valid (*e*); but a similar stipulation to continue in force after the debt is paid off is void, as a clog on the equity of redemption (*f*). For the same reason the following conditions have been held void, viz. :—

Provision for capitalizing interest, valid.

Collateral advantage may be stipulated for.

Clog on equity of redemption.

(1.) In a mortgage of shares in a company, a condition that the mortgagor shall endeavour to secure that the mortgagee shall always thereafter be employed as broker by the company (*g*).

(2.) In a mortgage of a farm, a condition that the mortgagor must sell the property within twelve months, employing the mortgagee as auctioneer, or paying him the equivalent of his commission (*h*).

(*b*) Sub-s. (2).

(*c*) *Clarkson v. Henderson* (1880), 14 Ch. D. 348; 49 L. J. Ch. 289; *Wrigley v. Gill*, 1906, 1 Ch. 165 (where the mortgagee was in possession); 75 L. J. Ch. 210; see also *Bradley v. Carritt*, 1903, A. C. 253, 279; 72 L. J. K. B. 471.

(*d*) *Potter v. Edwards* (1857), 26 L. J. Ch. 468; *Mainland v. Upjohn* (1889), 41 Ch. D. 126; 58 L. J. Ch. 361.

(*e*) *Biggs v. Hoddinott*, 1898, 2 Ch. 307; 67 L. J. Ch. 541.

(*f*) *Noakes v. Rice*, 1902, A. C. 24; 71 L. J. Ch. 139; and see *Morgan v. Jeffreys*, 1910, 1 Ch. 620; 79 L. J. Ch. 360; and see cases collected in *British S. Africa Co. v. De Beers*, 1910, 1 Ch. 354; 79 L. J. Ch. 345; aff. 1910, 2 Ch. 502.

(*g*) *Bradley v. Carritt*, 1903, A. C. 253; 72 L. J. K. B. 471.

(*h*) *Brown v. Ryan* (1901), 2 L. R. 653.

(3.) In a mortgage of debenture stock of a company, a condition giving the mortgagee the option to purchase the stock at 40 per cent. of the face value within twelve months (*i*); but when the option of purchase is an entirely separate transaction from the mortgage there is no clog (*k*).

SECT. IV.—*The rights and powers of a mortgagee as regards sale, insurance against fire, action on the covenant, and the appointment of a receiver.*

The Conv. Act, 1881, ss. 19 to 24, give the above-mentioned rights and powers.

The statutory power of sale is substituted for that which was formerly inserted in every well-drawn mortgage, and is substantially the same.

Equitable mortgage. It does not enable an equitable mortgagee to convey the legal estate (*l*).

Notice. The three months' default in payment mentioned in s. 20 runs from the service of the notice, not from the date fixed for payment by the notice (*m*).

Contract to sell before expiration of notice. A contract for sale entered into by a mortgagee after giving the notice required by the power, but before the expiration of the period within which the money must be paid in accordance with the notice, is rendered valid by the subsequent expiration of that period without payment (*n*).

Purchaser not protected if aware of irregularity. Under s. 21 (2), which provides that a conveyance made in professed exercise of the power is not to be impeachable on the ground of irregularity, a sale by a mortgagee will be valid as

(*i*) *Samuel v. Jarrah, &c. Corp.*, 1904, A. C. 323; 73 L. J. Ch. 526.

(*k*) *Reeve v. Lisle*, 1902, A. C. 461; 71 L. J. Ch. 768.

(*l*) *Re Hodson and Howe* (1887), 35 Ch. D. 668; 56 L. J. Ch. 755; and *cf. Re Solomon and Meagher* (1889), 40 Ch. D. 508; 58 L. J. Ch. 339, where the sale was made under Lord Cranworth's Act.

(*m*) *Barker v. Willingworth*, 1908, 2 Ch. 20; 77 L. J. Ch. 581.

(*n*) *Major v. Ward* (1847), 5 Hare, 598; *Farrar v. Farrars, Ltd.* (1888), 40 Ch. D. 395, 412; 58 L. J. Ch. 185.

regards the purchaser, although it may turn out that the power of sale was improperly exercised, provided that the purchaser had no knowledge that this was so (*o*). But if facts are actually brought to the purchaser's knowledge showing that the sale is improper, he could not safely complete (*p*). The protection to a purchaser only accrues under s. 21 after the conveyance has been made (*q*).

If a mortgagor has conveyed the equity of redemption by way of second mortgage, the notice required by the Act of 1881 ought to be given to the second mortgagee, as well as to the mortgagor, the term "mortgagor" in the Act being defined as including persons deriving title under the original mortgagor. And if a mortgagee fails to give such notice, he will be liable in damages for such default (*r*).

Notices before sale should be given to a subsequent mortgagee.

A mortgagee is liable to the mortgagor and to subsequent mortgagees for a loss arising by reason of a mistake in the particulars of sale prepared by his auctioneer (*s*).

Mortgagee liable for loss owing to a mistake in particulars.

The Court will not interfere as against a purchaser in good faith from a mortgagee, although the price is very inadequate, unless it is so low as to be evidence of fraud (*t*).

Sale at inadequate price valid.

A second mortgagee may purchase from a first mortgagee selling under his power of sale (*u*); but a mortgagor purchasing under a power of sale in a first mortgage has no title to priority as against his own second mortgagee (*x*). Under the usual power of sale, the mortgagee may sell subject to a stipulation that a part of the purchase-money may remain on mortgage (*y*).

How power of sale may be exercised.

(*o*) *Bailey v. Barnes*, 1894, 1 Ch. 25; 63 L. J. Ch. 73.

(*p*) See *Selwyn v. Garfit* (1888), 38 Ch. D. 273; 57 L. J. Ch. 609.

(*q*) *Life Interest, &c. Soc. v. Hand-in-Hand Soc.*, 1898, 2 Ch. 230; 67 L. J. Ch. 548.

(*r*) *Hoole v. Smith* (1881), 17 Ch. D. 434; 50 L. J. Ch. 576.

(*s*) *Tomlin v. Luce* (1889), 43 Ch. D. 191; 59 L. J. Ch. 161.

(*t*) *Warner v. Jacob* (1882), 20 Ch. D. 220; 51 L. J. Ch. 642.

(*u*) *Kirkwood v. Thompson* (1865), 2 D. J. & S. 613; 34 L. J. Ch. 501.

(*x*) *Otter v. Faur* (1856), 2 K. & J. 650; 26 L. J. Ch. 128.

(*y*) *Thurlow v. Mackeson* (1868), L. R. 4 Q. B. 97; 38 L. J. Q. B. 57.

Mortgagee  
may sell to  
owner of un-  
divided share.

In the case of a mortgage by several tenants in common the mortgagee may sell to one of the mortgagors without any notice to, or consent of, the others, and it is no objection to such a sale that it is for the amount due for principal, interest, and costs (z).

Easements,  
&c.

Though a mortgagee, when selling under the statutory power of sale, has not the same full power over the property as an absolute owner, he can convey the property to a purchaser with all the legal incidents accompanying the grant, and on sale of part of the property comprised in the security can give the purchaser an implied easement of light over the remainder (zz).

May sell to his  
solicitor.

A mortgagee may sell in good faith to a solicitor who acted for him on the mortgage, but not on the sale (a).

Position of  
mortgagee on  
mortgagor's  
bankruptcy.

On the bankruptcy of the mortgagor, the mortgagee, whether legal or equitable, is a "secured creditor" within the Bankruptcy Act, 1883 (b), and as such may (1) realize his security and prove for the balance; (2) surrender his security to the trustee and prove for his whole debt; or (3) assess the value of his security in his proof. If he values his security the trustee may redeem at such value or may require that the security be sold (c). A mortgagee of land may also apply to the Court in Bankruptcy, and obtain an order for a sale (d). The Court will inquire whether the applicant is a mortgagee, and, if so, will take an account of what is due to him for principal, interest, and costs. A sale will then be directed, and the sale money will be applied, first, in paying the costs, charges, and expenses of the trustee; secondly, in payment of the principal, interest, and costs due on the mortgage; and the surplus (if any) will be paid to the

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(z) *Kennedy v. De Trafford*, 1897, A. C. 180; 66 L. J. Ch. 413; *Re Biss*, 1903, 2 Ch. 40, 57; 72 L. J. Ch. 473.

(zz) See *Boon v. Turner*, 1900, 2 Ch. 211; 69 L. J. Ch. 593.

(a) *Nutt v. Easton*, 1899, 1 Ch. 873; 68 L. J. Ch. 367; aff. on another ground, 1900, 1 Ch. 29; 69 L. J. Ch. 46.

(b) S. 168.

(c) Sched. II., rr. 9 to 17. As to the right of the secured creditor to re-value his security, see *Re Fanshawe*, 1905, 1 K. B. 170; 74 L. J. K. B. 153.

(d) Bankruptcy Rules, 1886, rr. 73 *et seq.*

trustee. The conduct of the sale is in the discretion of the Court, and will, as a general rule, be given to the trustee, unless the security is insufficient, in which case it will probably be given to the mortgagee (*e*). If the sale money is insufficient to pay the debt, the mortgagee may prove for the deficiency. It is not usually necessary, nor is it imperative on the mortgagee, to apply to the Court for the above order; he may, if he prefers it, proceed in the Chancery Division for foreclosure, or exercise the power of sale (if any) reserved by the deed or conferred by statute, or pursue any other of his ordinary remedies (*f*). A secured creditor is not bound to receive payment of his debt from his debtor after notice of an act of bankruptcy, as he cannot safely hand over the securities to him (*g*).

A mortgagee cannot be interfered with in the exercise of any of his powers except on the payment into Court of the full amount claimed by him for principal, interest, and costs (*h*); and he may pursue all his remedies at one and the same time, or separately, as he may think fit. If, pending a foreclosure suit, he sues on the covenant, and obtains full payment, the mortgagor is, by the fact of payment, entitled to a reconveyance, and foreclosure is of course prevented; if a part only of the debt is recovered in the action the mortgagee may foreclose for non-payment of the remainder. If, on the other hand, he obtains foreclosure first, and finds that the value of the estate is not sufficient to cover his debt, he is not precluded from suing on the covenant, so long as the mortgaged estate remains in his power, but by so doing he gives to the mortgagor a renewed right to redeem, or in other words opens the foreclosure. If, however, the mortgagee after he has foreclosed sells the mortgaged estate, and thus prevents himself from restoring it, the Court will by injunction restrain him from afterwards suing

Mortgagee may pursue all his remedies simultaneously.

Opening the foreclosure.

(*e*) *Re Jordan* (1884), 13 Q. B. D. 228; 53 L. J. Q. B. 554.

(*f*) See Bankr. Act, 1883, s. 9 (2).

(*g*) *Ponsford & Co. v. Union of London, &c. Bank*, 1906, 2 Ch. 444; 75 L. J. Ch. 724.

(*h*) *Paynter v. Carew* (1854), Kay, App. xxxvi.; 23 L. J. Ch. 596.

on the covenant (*i*) ; but this of course does not apply to a sale by a mortgagee, who has not foreclosed, under his power of sale (*k*).

Advantage of separate covenant to pay interest.

Under the usual separate covenant to pay interest after the day appointed for payment of principal, arrears of interest may be recovered without calling in the principal. But if the separate covenant is omitted, interest after the day of default is recoverable only as damages, and is limited to 5 per cent., or if a less rate is named by the parties as payable up to the day of default, to that rate (*l*).

Effect of judgment as regards interest.

If the mortgagee brings an action on the covenant to pay principal and interest and obtains judgment, the personal remedy under the covenant merges in the judgment, which bears interest at 4 per cent. (*m*) ; but this rule does not prevent the mortgagee from holding his security until he has received payment of principal and interest at the agreed, though higher rate, if there is a separate covenant to pay interest (*n*).

Receivers.

The Conv. Act, 1881, s. 19 (1) (iii.), authorises a mortgagee to appoint a receiver of the income of the property or of any part thereof when the mortgage money has become due. S. 24 defines the receiver's powers, &c. (*o*).

Agent of mortgagor.

The receiver is the agent of the mortgagor where appointed under the statutory power (*p*), but ceases to be so if he is afterwards appointed receiver by the Court (*q*), or if he is the receiver of a company which is wound up by the Court (*r*).

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(*i*) *Lockhart v. Hardy* (1846), 9 Beav. 349; 15 L. J. Ch. 347; *Palmer v. Hendrie* (1859), 27 Beav. 349; *Kinnaird v. Trollope* (1888), 39 Ch. D. 636, 642; 57 L. J. Ch. 905.

(*k*) *Rudge v. Richens* (1873), 8 C. P. 358; 42 L. J. C. P. 127.

(*l*) *Re Roberts* (1880), 14 Ch. D. 49.

(*m*) Judgments Act, 1838, s. 17; *Ex p. Fewings* (1883), 25 Ch. D. 338; 53 L. J. Ch. 545.

(*n*) *Economic, &c. Soc. v. Osborne*, 1902, A. C. 147; 71 L. J. P. C. 34.

(*o*) See also *White v. Metcalf*, 1903, 2 Ch. 567; 72 L. J. Ch. 712; Wolst. Conv. Acts, 9th ed., 83—86.

(*p*) Conv. Act, 1881, s. 19 (2); and *cf. Re Vibos*, 1900, 1 Ch. 470; 69 L. J. Ch. 209; *Robinson Printing Co. v. Chic*, 1905, 2 Ch. 123; 74 L. J. Ch. 399.

(*q*) *Hand v. Blow*, 1901, 2 Ch. 721; 70 L. J. Ch. 687.

(*r*) *Gosling v. Gaskell*, 1897, A. C. 575; 66 L. J. Q. B. 848; and see *Re*

If a receiver has been appointed the mortgagor must obtain his authority to distrain (s). Distress by mortgagor.

A receiver can pay the cost of insurance and executing necessary repairs (t). Repairs.

A receiver must pay arrears of interest accruing as well before as after his appointment (u). Interest.

A receiver can retain commission not exceeding £5 per cent. (x). Costs.

The powers conferred by Lord Cranworth's Act are still exercisable in the case of mortgages executed before 1882 (y). Lord Cranworth's Act.

Sureties for receivers appointed by the Court are liable in respect of all money which the receiver ought to have paid into Court (z). Sureties for receiver appointed by the Court.

#### SECT. V.—*The powers, duties, and liabilities of a mortgagee in possession.*

A mortgagee may, at any time after the day appointed for payment, enter into possession of the mortgaged property and receive the rents towards payment of his debt. He will have to account to the mortgagor for the rents so received, and he will be responsible for gross and wilful negligence or injury, such as pulling down buildings, &c., but he will be allowed costs for necessary repairs (a). In order to entitle him to the cost of permanent improvements, he must make out a case for them in the action (b). He may take possession of part of the mortgaged property, leaving the rest in the possession of the mortgagor (c). Mortgagee in possession must account to mortgagor.

In order to constitute a mortgagee in possession he must When receipt of rent constitutes taking possession.

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*Henry Pound, &c.* (1889), 42 Ch. D. 402; 58 L. J. Ch. 792; *British Linen Co. v. S. American, &c. Co.*, 1894, 1 Ch. 108; 63 L. J. Ch. 169.

(s) *Woolston v. Ross*, 1900, 1 Ch. 788; 69 L. J. Ch. 363.

(t) Conv. Act, 1881, s. 24 (8) (iii.); as to repairs see *White v. Maltalf, sup.*

(u) Conv. Act, 1881, s. 24 (8) (iv.); *National Bank v. Keaney*, 1898, 1 Ir. Rep. 197.

(x) Conv. Act, 1881, s. 24 (6).

(y) *Re Solomon and Meagher* (1889), 40 Ch. D. 508; 58 L. J. Ch. 339.

(z) *Re Graham*, 1895, 1 Ch. 66; 64 L. J. Ch. 98.

(a) *Sandon v. Hooper* (1843), 6 Beav. 246; 12 L. J. Ch. 309.

(b) *Henderson v. Astwood*, 1894, A. C. 150.

(c) *Simmis v. Shirley* (1877), 6 Ch. D. 173; 46 L. J. Ch. 875.

receive the rents from the tenant in such a way as to be in effect a displacing of the mortgagor in the management and control of the property. If the mortgagor's agent receives the rents from the tenant and then hands over the whole to the mortgagee, the latter does not thereby become mortgagee in possession (*d*).

Is bound to deal with property as a prudent owner.

A mortgagee in possession is bound to deal with the property in the same way as a prudent man would deal with his own; he ought not to engage in, and will not be allowed for, adventures and speculations (*e*). Thus, he must not open mines (*f*), unless the security is insufficient (*g*); and if he comes into possession of mines already open, he should advance no more in the management of them than a cautious owner would spend (*h*).

May grant leases and cut and sell timber.

A mortgagee in possession, where the mortgage has been made after 1881, has the same powers of granting leases as a mortgagor in possession (*i*). A mortgagee in possession may also cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, and may contract for any such cutting and sale to be completed within any time not exceeding twelve months from the making of the contract (*k*).

How account to be taken.

If the net rents received by the mortgagee are more than sufficient to keep down the interest on his debt, the surplus must be applied towards payment of the principal; and a question often arises in what manner the account is to be taken as to such surplus rent, *i.e.*, whether annual rests are to be made, and the principal to be sunk each year to the amount of the surplus rents, or whether the interest shall be allowed to run on until the whole debt is discharged. It seems to be now settled that an account with annual rests will not be directed, unless at

Annual rests.

(*d*) *Noyes v. Pollock* (1886), 32 Ch. D. 53; 55 L. J. Ch. 513; and see *Chapman v. Smith*, 1907, 2 Ch. 97; 76 L. J. Ch. 394.

(*e*) *Hughes v. Williams* (1806), 12 Ves. 493.

(*f*) *Thorneycroft v. Crockett* (1848), 16 Sim. 445; *Hood v. Easton* (1856), 2 Giff. 692.

(*g*) *Millett v. Dacey* (1862), 31 Beav. 470; 32 L. J. Ch. 122.

(*h*) *Rowe v. Wood* (1822), 2 J. & W. 553.

(*i*) Conv. Act, 1881, s. 18 (2).

(*k*) S. 19 (1) (iv.).

the time when the mortgagee entered into possession no interest was in arrear, as a mortgagee is not bound to receive his money in driblets. If he enters into possession when no interest is due, he shows his intention to receive payment of the debt in driblets, and therefore the account goes with rests; but if the interest is in arrear, the fact of his taking possession affords no evidence of such an intention, as he is driven to take possession by the non-payment of the interest, and therefore the account goes on till the whole debt is satisfied (*l*). But a mortgagee of leaseholds may take possession when there is no arrear of interest, under circumstances which may not render him liable to account with annual rests, as if he enters in order to prevent a forfeiture for non-payment of ground rent or non-insurance (*m*). If the mortgage contains a provision for capitalizing interest in arrear the account will be taken continuously in the usual way and the mortgagee will only be entitled to simple interest unless he can make out in any half-year the existence of facts which entitle him to compound interest (*mm*).

But if a mortgagee in possession sells a part of the mortgaged property under a power of sale, he must apply the proceeds first in payment of interest and costs, and then either pay the balance to the mortgagor, or apply it in reduction of principal; and in taking an account against a mortgagee who has retained sale money beyond the interest and costs due, a rest must be made at the time of the receipt of the proceeds of sale, even though he may have entered into possession when interest was in arrear (*n*). This rule does not entitle the mortgagor to have rests made in the account of rents and profits (*o*).

When mortgagee in possession sells part.

Interest is not in arrear so long as the mortgagee in possession has rents and profits in his hands exceeding the amount of such interest, but this does not prevent the mortgagee

When is interest in arrear.

(*l*) See *Nelson v. Booth* (1858), 3 De G. & J. at p. 122; 27 L. J. Ch. 782.

(*m*) *Patch v. Wild* (1861), 30 Beav. 99.

(*mm*) *Wrigley v. Gill*, 1906, 1 Ch. 165, 179; 75 L. J. Ch. 210.

(*n*) *Thompson v. Hudson* (1870), L. R. 10 Eq. 497; 40 L. J. Ch. 28.

(*o*) *Ainsworth v. Widding*, 1905, 1 Ch. 435; 74 L. J. Ch. 256.

claiming interest at the higher rate in default of punctual payment (*p*).

SECT. VI.—*Mortgages from a client to his solicitor.*

Duty of  
solicitor.

A solicitor taking a mortgage from his client is bound to give him the same advice about the transaction as if the client were borrowing from a third party. And he must not insert in the mortgage deed any unusual provision, *e.g.*, a clause dispensing with notice on an exercise of the power of sale, unless there are special circumstances which would render such a clause a proper one (*q*).

Must not  
insert unusual  
condition  
in mortgage.

Terms on  
which pro-  
ceedings by  
solicitor mort-  
gagee will be  
stayed.

The rule that proceedings by a mortgagee to enforce his security cannot be stayed except on payment into Court of the full amount claimed for principal, interest, and costs, does not apply where the mortgagee is the solicitor of the mortgagor. In such a case the Court will look to all the circumstances, and will make such order as will save the client from oppression without injuring the solicitor's security (*r*).

Law that  
solicitor mort-  
gagee could  
not charge  
profit costs  
altered by  
Act of 1895.

It was formerly the law that a solicitor preparing a mortgage, or a transfer of a mortgage, to himself, could not charge the mortgagor for its preparation, and if he acted for himself in a suit in defence of his title, or in a foreclosure or redemption action, or in selling under the power of sale, he could not recover profit costs (*s*). It is now provided by the Mortgagees' Legal Costs Act, 1895 (*t*), that a solicitor mortgagee may charge for business prior to mortgage when the mortgage is dated since the Act, and for subsequent business when the mortgage dates before or after the Act (*u*).

Act applies to  
solicitors only.

It will be observed that the above Act does not apply to

(*p*) *Wrigley v. Gill*, 1906, 1 Ch. 165; 75 L. J. Ch. 210.

(*q*) *Cockburn v. Edwards* (1881), 18 Ch. D. 449; 51 L. J. Ch. 46; *Pooley's Trustee v. Whitham* (1886), 33 Ch. D. 111; 55 L. J. Ch. 899.

(*r*) *Macleod v. Jones* (1883), 24 Ch. D. 289; 53 L. J. Ch. 145.

(*s*) *Eyre v. Wynn-Mackenzie*, 1894, 1 Ch. 218; 63 L. J. Ch. 239. See also *S. C.*, 1896, 1 Ch. 135; 65 L. J. Ch. 194.

(*t*) See *Cheese v. Keen*, 1908, 1 Ch. 245; 77 L. J. Ch. 163.

(*u*) This entitles a solicitor to charge a negotiation fee for a loan made by himself: *Re Norris*, 1902, 1 Ch. 741; 71 L. J. Ch. 187.

professional persons other than solicitors. Hence an auctioneer who is a mortgagee is still unable to charge for professional costs on a sale by him (*x*).

Auctioneer  
mortgagee.

SECT. VII.—*The effect of the Statutes of Limitation as between mortgagor and mortgagee.*

The R. P. Lim. Act, 1874, s. 8, provides that:—

No action or suit or other proceeding shall be brought to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within twelve years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for a release of the same, unless in the meantime some part of the principal money, or some interest thereon shall have been paid, or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable or his agent to the person entitled thereto or his agent; and in such case no such action or suit or proceeding shall be brought but within twelve years after such payment or acknowledgment or the last of such payments or acknowledgments if more than one was given (*y*).

Mortgagee  
barred of  
remedy  
at end of  
twelve years  
after date  
when mortgage  
debt due or  
last payment  
of principal or  
interest or  
acknowledg-  
ment.

The above enactment applies not only to an action by a mortgagee to recover possession of the land or for foreclosure, but also to the personal remedy on the covenant (if any) in the mortgage deed (*z*), or on a collateral bond or covenant (*a*).

Act applies to  
personal  
remedies as  
well as those  
against the  
land.

If there has been no payment of principal money or interest under the deed, and no acknowledgment, the twelve years will run in the case of an ordinary mortgage, which usually makes the principal payable six months after date, from the day fixed for redemption.

From what  
period time  
runs, where  
no payment  
or acknow-  
ledgment.

If a mortgagee obtains an order for foreclosure within the twelve years, he may bring an action of ejectment to recover

Effect of  
foreclosure.

(*x*) *Matthison v. Clarke* (1854), 3 Drew. 3; 24 L. J. Ch. 202.

(*y*) This section is a re-enactment of the provisions in the R. P. Lim. Act, 1833, s. 40, substituting twelve for twenty years.

(*z*) *Sutton v. S.* (1882), 22 Ch. D. 511; 52 L. J. Ch. 333; *Kirkland v. Peatfield*, 1903, 1 K. B. 756; 72 L. J. K. B. 355.

(*a*) *Fearnside v. Flint* (1883), 22 Ch. D. 579; 52 L. J. Ch. 479; see *Re Powers* (1885), 30 Ch. D. 291; for other cases, see Coote, 7th ed., 994 *et seq.*; *Read v. Price*, 1909, 2 K. B. 724; 78 L. J. K. B. 1137.

possession of the land at any time within twelve years from the date of the foreclosure order, as such an order vests the beneficial ownership in him for the first time (*b*).

By whom  
part payment  
must be  
made in  
order to keep  
debt alive.

Payment of interest by a person who as between himself and the mortgagor is bound to pay, though he is under no contract with the mortgagee to do so, is sufficient to prevent the statute from running (*c*). But a payment of rent by a tenant of the mortgaged property to the mortgagee in consequence of a notice from the latter is not payment of interest by a person bound to pay, and is therefore insufficient (*d*).

Payment of  
interest by  
tenant for life.

Payment of interest by a tenant for life of real estate charged with the debt keeps it alive against persons entitled in remainder (*e*); and if the tenant for life of the real estate is also entitled for life to the interest of the debt, he will be deemed for this purpose to have paid the interest to himself (*f*). But if two estates are charged with a debt in equal moieties, payment of interest by the owner of one estate does not keep the debt alive against the owner of the other (*g*).

By owner of  
estate charged  
with moiety  
of debt.

By mortgagor  
after sale of  
part of  
property.

If the equity of redemption in part of the property comprised in a mortgage is conveyed by the mortgagor to a purchaser for value, and after the sale the mortgagor or his agent continues to pay the interest on the whole debt, such payment keeps the debt alive against the sold as well as the unsold land (*h*). So, also, payment of interest by the assignee or tenant for life of an equity of redemption keeps the debt alive against the

By assignee  
or devisee of  
equity of  
redemption.

(*b*) *Pugh v. Heath* (1882), 7 A. C. 235; 51 L. J. Q. B. 367.

(*c*) *Bradshaw v. Widdrington*, 1902, 2 Ch. 430; 71 L. J. Ch. 627.

(*d*) *Harlock v. Ashberry* (1882), 19 Ch. D. 539; 51 L. J. Ch. 394; see also *Re Clifton*, 1900, 1 Ch. 774; 69 L. J. Ch. 478.

(*e*) *Roldam v. Morley* (1857), 1 De G. & J. 1; 26 L. J. Ch. 438; *Pears v. Laing* (1871), L. R. 12 Eq. 41; 40 L. J. Ch. 225; *Re Chant*, 1905, 2 Ch. 225; 74 L. J. Ch. 542.

(*f*) *Topham v. Booth* (1887), 35 Ch. D. 607; 56 L. J. Ch. 812; see *Re Allen*, 1898, 2 Ch. 499; 67 L. J. Ch. 614.

(*g*) *Dickenson v. Teasdale* (1862), 1 D. J. & S. at p. 57; 32 L. J. Ch. 37.

(*h*) *Chinnery v. Evans* (1864), 11 H. L. C. 115.

original mortgagor and his personal representative (*i*). And on the same principle, if a mortgagor devises the equity of redemption, payment of interest by the devisee would prevent the statute from running in favour of the testator's personal estate, but if the devisee is himself the person entitled to the interest, and therefore pays none, payment will not be presumed on the ground of a supposed duty on his part to make it (*k*).

If persons who are executors and devisees in trust of the real estate distribute the personal estate without providing for a mortgage debt, and the mortgaged land afterwards proves an insufficient security, they cannot treat the distribution as a *devastavit*, entitling them to claim the benefit of the Statute of Limitations at the end of six years (*l*).

Executors distributing residuary estate while mortgage debt unpaid.

The R. P. Lim. Act, 1833, s. 42, provides that:—

No arrears . . . of interest in respect of any sum of money charged upon . . . land . . . shall be recovered by any . . . action or suit but within six years next after the same shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto or his agent, signed by the person by whom the same was payable or his agent; PROVIDED NEVERTHELESS that where any prior mortgagee or other incumbrancer shall have been in possession of any land, or in the receipt of the rents and profits thereof, within one year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or incumbrance on the same land the person entitled to such subsequent mortgage or incumbrance may recover in such action or suit the arrears of interest which shall have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt as aforesaid, although the time may have exceeded the said term of six years (*ll*).

Only six years' arrears of interest recoverable.

This section applies to a foreclosure suit or any other legal proceeding taken by the mortgagee against the land or the proceeds of the land, *e.g.*, to an application by him for payment

Enactment applies whenever legal proceeding by mortgagee is necessary.

(*i*) *Dibb v. Walker*, 1893, 2 Ch. 429 62 L. J. Ch. 536.

(*k*) *Re England*, 1895, 2 Ch. 820; 65 L. J. Ch. 21; *Re Lacey*, 1907, 1 Ch 330; 76 L. J. Ch. 316.

(*l*) *Re Hyatt* (1888), 38 Ch. D. 609; 57 L. J. Ch. 777; and see *Re Moon*, 1907, 2 Ch. 304; 76 L. J. Ch. 535.

(*ll*) See Carson, 2nd ed. 198 *et seq.*

out of Court of purchase-money paid into Court under the L. C. C. Act, 1845 (*m*).

It does not apply to sale by mortgagee under power, nor to redemption action by mortgagor.

But s. 42 does not apply where a mortgagee has sold under his power of sale, and has in his hands the proceeds of the sale, so as to preclude him from retaining more than six years' arrears in the event of an action brought against him by the mortgagor for the surplus proceeds (*n*). Nor does it apply to an action by the mortgagor for redemption (*o*), or to any proceeding by the mortgagor to obtain payment of his debt out of money in Court representing the proceeds of the mortgaged land (*p*).

Arrears of interest recoverable by action on covenant in mortgage deed.

By the Civil Procedure Act, 1833, s. 3, twenty years was fixed as the period within which actions of covenant might be brought, and it was held that this enactment must be taken as partially repealing, or engrafting an exception on, s. 42 of the R. P. Lim. Act, 1833, and that the joint effect of the two Acts was that, as regards money secured by mortgage of land, six years' arrears of interest only could be recovered against the land, but that if the mortgage deed contained, or was accompanied by, a covenant or bond to pay principal and interest, twenty years' arrears might be recovered by an action on the covenant or bond (*q*).

Time runs against mortgagee of reversion during prior estate.

The proviso at the end of s. 42 of the R. P. Lim. Act, 1833, does not prevent the six years from running against the mortgagee of a reversionary interest during the continuance of the prior estate (*r*).

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(*m*) *Re Stead's Mortgaged Estates* (1876), 2 Ch. D. 713; 45 L. J. Ch. 634.

(*n*) *Re Marshfield* (1887), 34 Ch. D. 721; 56 L. J. Ch. 599.

(*o*) *Dingle v. Coppen*, 1899, 1 Ch. 726; 68 L. J. Ch. 337.

(*p*) *Re Lloyd*, 1903, 1 Ch. 385; 72 L. J. Ch. 78; but see *Re Hazeldine*, 1908, 1 Ch. 35; 77 L. J. Ch. 97, where the title of the mortgagees was extinguished.

(*q*) *Hunter v. Nockolds* (1850), 1 Mac. & G. 640; 19 L. J. Ch. 177; see also *Re Lloyd*, 1903, 1 Ch. 385; 72 L. J. Ch. 78.

(*r*) *Sinclair v. Jackson* (1853), 17 Beav. 405; *Mellersh v. Brown* (1890), 45 Ch. D. 225; 60 L. J. Ch. 43.

Since the Act of 1874 a mortgagee gains no advantage as regards the period within which he must pursue his remedies, by the existence of an express trust for securing the money (s).

Express trust does not exclude statute.

An acknowledgment by a mortgagor, or his personal representative, given to a prior incumbrancer, will not entitle that prior incumbrancer to recover, as against a subsequent incumbrancer, more than six years' arrears of interest (t).

Acknowledgment given to prior incumbrancer does not affect subsequent one.

With regard to the Civil Procedure Act, 1833, s. 3, where there are two or more joint covenantors, the mere payment of part of the principal or interest by one will not prevent the statute from running in favour of the other (u).

Part payment by one co-debtor.

Where a surety joins in a covenant by a mortgagor of land for payment of the mortgage money, or gives a separate covenant or bond for such payment, the question whether an action against the surety is barred at the end of twelve years, or not until the end of twenty years, remains unsettled (v).

When action against surety barred.

Where a simple contract debt is also charged on land, an action against the debtor must be brought within six years, being the period fixed by the Lim. Act, 1623, and the payment of interest by one of several joint debtors does not keep the debt alive against the others (y).

Simple contract debt charged on land.  
21 Jac. 1,  
c. 16, s. 3.

By the Act of 1874, s. 7, when a mortgagee has taken possession, the mortgagor's right to redeem will be barred at the end of twelve years from the time of taking possession, unless in the meantime an acknowledgment of the title of the mortgagor or of his right of redemption is given to the mortgagor, or some person claiming under him, or to the agent of such mortgagor or person, in writing, signed by the mortgagee or the person claiming through him, in which case the

When mortgagor barred of his equity of redemption.

(s) S. 10. See *Williams v. W.*, 1900, 1 Ch. 152; 69 L. J. Ch. 77.

(t) *Bolding v. Lane* (1863), 1 D. J. & S. 122; 32 L. J. Ch. 219.

(u) Mercantile Law Amendment Act, 1856, s. 14.

(v) *Re Frisby* (1889), 43 Ch. D. 106; 59 L. J. Ch. 94.

(y) *Barnes v. Gilenton*, 1899, 1 Q. B. 885; 68 L. J. Q. B. 502.

time will run from the date of the acknowledgment, or the last acknowledgment, if more than one. The section makes provision for the case of there being more than one mortgagor or mortgagee, and an acknowledgment being given to or by one only. Twelve years' uninterrupted possession by the mortgagee without intermediate payment or acknowledgment is an absolute bar as against the mortgagor and all persons claiming under him, although he or they may have been under disability, and although the equity of redemption may have been devised to a tenant for life with remainders over (z).

Right of redemption not revived by subsequent acknowledgment.

Where a mortgagee has been in possession for more than the statutory period without acknowledgment, the right of redemption is extinguished (a), and cannot be revived by a subsequent acknowledgment (b).

Enlargement of mortgagee's interest.

The interest of a mortgagee in possession of freehold land is personal estate until the mortgagor is statute-barred. It then becomes real estate (c).

Title of mortgagor when mortgagee barred.

In like manner where a mortgagee is barred, the legal estate becomes revested in the mortgagor, and no subsequent acknowledgment has any efficacy (d).

Possession by first mortgagee.

When the right of action of a mortgagee to recover land has accrued, the possession by a first mortgagee does not suspend the running of the period of limitation against subsequent mortgagees (e).

Possession by mortgagee of real and personal estate.

Where real estate and a policy of life assurance are comprised in the same mortgage and are subject to the same proviso for redemption, and the mortgagee has been in possession of the real estate for more than twelve years without acknowledgment,

(z) *Forster v. Patterson* (1881), 17 Ch. D. 132; 50 L. J. Ch. 603; *Browne v. Bishop of Cork* (1841), 1 Dr. & Wal. 700.

(a) R. P. Lim. Act, 1833, s. 34.

(b) *Sanders v. S.* (1881), 19 Ch. D. 373; 51 L. J. Ch. 276; see *Re Nisbet and Potts*, 1906, 1 Ch. 386; 75 L. J. Ch. 238.

(c) *Re Loveridge*, 1904, 1 Ch. 518; 73 L. J. Ch. 15.

(d) *Kibble v. Fairthorne*, 1895, 1 Ch. 219; 64 L. J. Ch. 184; and see *Re Hazeldine*, 1908, 1 Ch. 34; 77 L. J. Ch. 97.

(e) *Johnson v. Brock*, 1907, 2 Ch. 533; 76 L. J. Ch. 602.

so that the mortgagor's right to redeem it has been barred, his right to redeem the policy is barred also (*i*).

SECT. VIII.—*The order of liability of the mortgaged property and the general estate of the mortgagor or other person liable to the debt.*

It was formerly the law that if a mortgagor died intestate, or by his Will showed no contrary intention, his personal estate was liable to the payment of his mortgage debts in exoneration of the land comprised in the mortgage (*g*). This rule, however, only applied where the mortgage debt was originally the debt of the deceased mortgagor; thus, if A. became entitled by descent or purchase to mortgaged land, and afterwards died intestate, his heir took the land *cum onere*, and was not entitled to have it exonerated out of the personal estate, even though upon a transfer of the mortgage in A's lifetime he may have covenanted to pay the money (*h*). *A fortiori*, if a person having only a limited interest in land subject to a mortgage entered into a bond or covenant for payment of the debt, the bond or covenant was considered as auxiliary only. Again, the rule would not apply where an intention appeared on the face of the mortgage deed, or could be implied from the dealings with the property, that the land should be the primary security. Thus, where a mortgage was made containing the usual covenant by the mortgagor for payment of the mortgage money, and subsequently the mortgagor settled the property, subject to the mortgage upon trust for himself for life, with remainders over, leaving in himself the ultimate reversion in fee, which he devised by his Will, it was held that his general personal estate was exonerated

Formerly the personalty was the primary security as a general rule.

Exceptions to rule.

(*f*) *Charter v. Watson*, 1899, 1 Ch. 175; 68 L. J. Ch. 1.

(*g*) *Howel v. Price* (1715), 1 P. Wms. 291.

(*h*) See *Bond v. England* (1855), 2 Kay & J. 41; 24 L. J. Ch. 671, where the subject is fully discussed.

from the mortgage debt, the Court considering that the subsequent dealing with the property showed the intention of the mortgagor to make the land the primary security (*i*). And where property was mortgaged, and was then settled by the mortgagor subject to the mortgage, and with a proviso that the land should be the primary security, and the mortgagor afterwards paid off the debt out of his own money, it was held that the mortgage debt was to be considered as kept on foot for the benefit of his personal estate (*k*).

The law on this subject has been altered by the Real Estate Charges Acts, 1854, 1867, and 1877.

Mortgaged  
land now the  
primary fund.

The result of these enactments is that on the death of a mortgagor of freehold, copyhold or leasehold (*l*) property, or a purchaser of any such property, who has not paid the whole of the purchase-money, the property is the primary fund for payment of the mortgage debt or the unpaid purchase-money, as the case may be, whether such mortgagor or purchaser has died intestate or has disposed of the property by his Will, unless in the latter case the Will contains an expression of a contrary intention, and such contrary intention will not be deemed to be signified by a charge of or direction for payment of debts upon or out of residuary real and personal estate, or residuary real estate (*m*). If freeholds or copyholds and leaseholds are together made the subject of mortgage or contract, the burden must be borne by the respective estates according to their value.

Aggregate gift.

Where lands of any tenure form the subject of an aggregate gift to the same person the donee cannot accept the beneficial

(*i*) *Langdale v. Briggs* (1856), 8 De G. M. & G. 391; 26 L. J. Ch. 27.

(*k*) *Pears v. Weightman* (1856), 2 Jur. (N. S.) 586.

(*l*) *Re Fraser*, 1904, 1 Ch. 726; 73 L. J. Ch. 481.

(*m*) As to what amounts to a contrary intention, see *Re Fleck* (1888), 37 Ch. D. 677; 57 L. J. Ch. 943; *Re Nevill* (1890), W. N. 125; 59 L. J. Ch. 511; *Re Heslath* (1900), 45 Sol. J. 11; *Re Valpy*, 1906, 1 Ch. 531; 75 L. J. Ch. 301. If other property of insufficient value is charged with the debt, the mortgaged property will remain primarily liable for the balance: *Re Birch*, 1909, 1 Ch. 787; 78 L. J. Ch. 385.

and disclaim the onerous part, but takes the whole subject to the burden in exoneration of the personalty (*u*).

A judgment debt, on which a writ of *elegit* has been issued and the land delivered to the creditor thereunder, comes within these Acts, hence the land is primarily liable (*o*).

When real estate and also property to which the Acts do not apply are the subjects of the same mortgage, in the administration of the mortgagor's estate, the real estate would have to bear such proportion of the mortgage debt as the value of such real estate bears to the value of the whole of the mortgaged property (*p*). So also when two estates are subject to the same mortgage, and one of them is specifically devised and the other passes under a residuary devise, the two estates must rateably bear the mortgage debt (*q*).

Effect when real estate and property to which Acts do not apply are subjects of same mortgage.

Upon a mortgage by a husband and wife of the wife's land, where the money is received by the husband, the husband and his estate are primarily liable (*r*). If the deed expresses that the money is paid to the husband and wife, that is *primâ facie* a payment to the husband; but it may be shown by extrinsic evidence that the payment was in fact for the benefit of the wife, and in that case the land will be primarily liable (*s*).

Primary liability of husband on mortgage of wife's land.

#### SECT. IX.—*Priority of incumbrances and the doctrine of notice.*

It sometimes happens that the same property is made the subject of several mortgages, the fact of the prior incumbrances being concealed from each subsequent mortgagee; or that a sale or mortgage is made by a person who is a trustee without power

(*n*) *Re Kensington*, 1902, 1 Ch. 203; 71 L. J. Ch. 170.

(*o*) *Re Anthony*, 1892, 1 Ch. 450; 61 L. J. Ch. 431; and see *Re Bowerman*, 1908, 2 Ch. 340; 77 L. J. Ch. 594.

(*p*) *Trestrail v. Mason* (1878), 7 Ch. D. 655; 47 L. J. Ch. 249.

(*q*) *Re Smith* (1886), 33 Ch. D. 195; 55 L. J. Ch. 914.

(*r*) *Tate v. Austin* (1714), 1 P. Wms. 264; *Pocock v. Lee* (1707), 2 Vern. 604; see *Scholefield v. Lockwood* (1863), 33 L. J. Ch. 106.

(*s*) *Hudson v. Carmichael* (1854), Kay, 613; 22 L. J. Ch. 893.

Cases in which questions of priority arise.

to sell or mortgage, or who is affected by notice of prior trusts or incumbrances, or whose title is otherwise defective in equity, to a person who has no knowledge of such circumstances. In these cases questions of priority arise—in the former, as between the successive mortgagees; and in the latter, as between the purchaser or mortgagee on the one hand, and the persons whose rights are prejudiced by the sale or mortgage on the other.

Rules applicable to such questions.

In determining such questions, two rules must be borne in mind. The one is, that where the equities are equal, the person who has the legal estate will prevail; and the second is, that as between persons having only equitable interests, if these equities are in other respects equal, priority of time gives the better equity, for *qui prior est tempore potior est jure*.

*The protection afforded by the legal estate.*

Purchaser without notice may protect himself against trusts, &c., by legal estate.

It has long been settled that if a person being a trustee on an express trust, or being affected by notice of a trust or incumbrance, conveys the legal estate to a purchaser or mortgagee for valuable consideration who has no notice, the latter is protected from such trust or incumbrance by the possession of the legal estate, and acquires an indefeasible title both at law and in equity, so that he may himself afterwards effectually sell or mortgage even to persons who have notice (*t*).

Some cases to which rule applies.

It follows that if B. takes a conveyance or mortgage of the legal estate from A. under circumstances which would make the transaction impeachable in equity as against B., either by A. himself, or by some person for whom A. is a trustee, and B. subsequently conveys the legal estate to C. as a purchaser for valuable consideration, and without notice, either actual or constructive, of such circumstances, C.'s title cannot be impeached. Thus, if A., being a mortgagee with a power of sale, sells to B.

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(*t*) *Pitcher v. Rawlins* (1872), L. R. 7 Ch. 259; 41 L. J. Ch. 485, see also *Taylor v. London, &c. Bk.*, 1901, 2 Ch. 231, 256; 70 L. J. Ch. 477.

under circumstances which would enable A.'s mortgagor to set aside the sale as against B., and B. subsequently sells or mortgages to C., who has no notice of such circumstances, C. is protected by the possession of the legal estate (*u*).

The protection of the legal estate is not confined to cases Tacking. where a purchaser or mortgagee acquires it at the time of his purchase or mortgage, or before he has notice of the prior incumbrance (*x*). Thus, a third mortgagee, advancing his money without notice of a second mortgage, may, by paying off a first mortgagee who has the legal estate, and taking a transfer from him of such first mortgage, hold the property as against the second mortgagee until not only the first mortgage but also the third is paid off—in other words, may tack the two debts together, and thus, as it were, squeeze out the second. The rule applies where a third mortgagee obtains the legal estate from the first mortgagee without paying him off, *e.g.*, where the latter is satisfied with some other security which he holds for the debt (*y*).

A purchaser or mortgagee, who, after completing his purchase or mortgage, becomes aware that the legal estate is vested in a trustee upon express trusts, cannot protect himself against such trusts by taking a conveyance of the legal estate from the trustee; for by taking a conveyance with notice of the trusts, he himself becomes the trustee, and must not, to get a plank to save himself, be guilty of a breach of trust (*z*).

Purchaser taking legal estate from express trustee with notice, not protected.

The rule is the same where the trust is a constructive one. Thus, if a first mortgagee, after his mortgage has been satisfied,

Third mortgagee taking a conveyance from first

(*u*) *Bailey v. Barnes*, 1894, 1 Ch. 25; 63 L. J. Ch. 73.

(*x*) *Bailey v. Barnes*, *sup.* The doctrine of tacking does not apply to lands in Yorkshire since the passing of the Yorkshire Registries Act, 1884, see s. 16; and see Wolst. Conv. Acts, 9th ed., 13, as to temporary abolition of protection by tacking elsewhere in England.

(*y*) *Taylor v. Russell*, 1892, A. C. 244; 61 L. J. Ch. 657.

(*z*) *Harpham v. Shacklock* (1881), 19 Ch. D. 207; *Taylor v. London, &c. Bk.*, 1901, 2 Ch. 231, 257; 70 L. J. Ch. 477; and see *Perham v. Kempster*, 1907, 1 Ch. 373; 76 L. J. Ch. 223.

mortgagee who has been previously paid off, not protected.

conveys the legal estate to a third mortgagee, and at the time of such conveyance both parties are aware of a second mortgage, the third mortgagee, though he had no notice of the second mortgage when he advanced his money, does not by such transaction obtain priority. The first mortgagee, having become a trustee for the second, commits a breach of duty in conveying the legal estate to the third, who, being aware of such breach of duty, will not be allowed to profit thereby (*a*).

First mortgagee cannot tack for further advances after notice of a second mortgage.

If a mortgage is made to secure present and future advances, and the mortgagor executes a second mortgage to another person, subject to the first one, the first mortgagee is not entitled to priority in respect of further advances made by him after notice of the second mortgage (*b*). This rule applies even where the further advance is made in pursuance of a covenant by the mortgagee entered into at the time of the first mortgage. The execution of the second mortgage in such a case releases the first mortgagee from any liability to damages for breach of his covenant (*c*).

How far protection of legal estate applies to transferee of a mortgage.

In the application of the doctrine as to the protection afforded by the legal estate to the transferee of a mortgage, it must be borne in mind that a mortgage is regarded in equity as a mere security for a debt, and consequently that the interests of persons claiming under a mortgage in the land comprised therein are regulated by their interests in the debt for which the land is a security. If, then, B., by fraud, induces A. to execute to him a mortgage, no money passing from B. to A., and no debt being in fact contracted, and if B., without the concurrence of A., subsequently transfers such mortgage to C. for valuable consideration, it is conceived that C. is in no better position than B., for as no debt was due to B., no debt passes

Transferee of a mortgage can be in no better position than transferor.

(*a*) *Bates v. Johnson* (1859), John. 304; 28 L. J. Ch. 509; *West London, &c. Bk. v. Reliance, &c. Socy.* (1885), 29 Ch. D. 954; 54 L. J. Ch. 1081.

(*b*) *Hopkinson v. Rolt* (1861), 9 H. L. C. 514; 34 L. J. Ch. 468.

(*c*) *West v. Williams*, 1899, 1 Ch. 132; 68 L. J. Ch. 127; see also *Hughes v. Britannia, &c. Socy.*, 1906, 2 Ch. 607; 75 L. J. Ch. 739.

to C. (*d*); and as the land was not the subject of the transaction, but the debt for which the land was only a security, C. cannot retain the land as against A. where there is no debt. In fact the mortgage is a nullity. Again, if A. mortgages land to B., who knows that A. is a trustee without a power to mortgage, or having such power is improperly exercising it, no debt is created as against the land and the beneficial owners of it. If, then, B. afterwards transfers such mortgage to C., then C., though without notice of the trust, can only stand in the shoes of B., and will not be allowed to retain the land against the beneficiaries of A. (*e*).

But where the mortgagor joins in the transfer of a mortgage, it is conceived that the transaction is to be treated as a new one, and that the transferee is not affected by any equitable right binding the original mortgagee of which he (the transferee) has not himself notice.

Distinction where mortgagor joins in transfer.

*Notice, actual or constructive.*

The Conv. Act, 1882, s. 3, provides :—

- (1) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless
- (i.) it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or
- (ii.) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel as such, or of his solicitor or other agent as such, or would have come to the knowledge of his solicitor or other agent as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

What notice purchaser is and is not to be affected by.

It is the duty (*f*) of a purchaser or mortgagee to require the vendor or mortgagor to deduce and prove a reasonable title, and

Purchaser should require vendor or lessor to

(*d*) *Parker v. Clarke* (1861), 30 Beav. 54; *Rolt v. White* (1862), 31 Beav. 520; 3 De G. J. & S. 360.

(*e*) *Burt v. Trueman* (1860), 29 L. J. Ch. 902, see also *Adsett v. Hives* (1863), 33 Beav. 52.

(*f*) The term "duty," as here used, does not mean that a purchaser or

deduce a reasonable title.

if he neglects to do so or purchases under a condition precluding him from doing so he will be affected with constructive notice of the contents of any deed forming part of the chain of title. This rule has not been altered as regards leaseholds by the V. & P. Act, 1874, or the Conv. Act, 1881, and a purchaser of leaseholds is in the same position with regard to notice as he would have been in if before those Acts he had agreed not to inquire into the lessor's title (*g*).

Notice of a deed is notice of instruments mentioned in it.

If a purchaser or mortgagee has notice of a deed as affecting the property, he ought to require its production, and if he does not, he will be deemed to have notice not only of its contents, but of the contents of any instruments which would have been disclosed by an examination of it (*h*). He will also be deemed to have notice of everything which he would have learnt had he required its production, *e.g.*, that the deed had been deposited as a security (*i*).

Notice of charge.

Notice of a charge is notice of everything auxiliary to it; but if the same deed contains two charges of two distinct properties, a notice given of one charge is not notice of the other (*k*).

Notice of occupation by tenant.

The occupation of land by a tenant affects a purchaser or mortgagee with constructive notice of all the tenant rights, but not with notice of his lessor's title or rights (*l*).

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mortgagee owes any duty to the possible holder of an adverse interest. It merely means the course which a man honestly dealing for his own interest ought to follow, with a view to his own title and security. If he does not follow that course, the omission of it, in the absence of explanation, may be evidence of a design, inconsistent with honest dealing, to avoid knowledge of the true state of the title, see per Lord Selborne, in *Agra Bank v. Barry* (1874), L. R. 7 H. L. 157.

(*g*) *Patman v. Harland* (1881), 17 Ch. D. 353; 50 L. J. Ch. 642; *Inrag v. Oakshette*, 1897, 2 Q. B. 218; 66 L. J. Q. B. 544.

(*h*) *Coppin v. Fernyghough* (1788), 2 Bro. C. C. 291; *Eland v. E.* (1838), 1 Beav. 235; 4 My. & Cr. 420; 8 L. J. Ch. 289; *Davies v. Thomas* (1836), 2 Y. & C. 234; 7 L. J. Ex. Eq. 21; and see *Berwick v. Price*, 1905, 1 Ch. 632; 74 L. J. Ch. 249.

(*i*) *Peto v. Hammond* (1861), 30 Beav. 495; *Oliver v. Hindon*, 1899, 2 Ch. 264; 68 L. J. Ch. 583.

(*k*) *Re Bright* (1856), 21 Beav. 430; 25 L. J. Ch. 449.

(*l*) *Hunt v. Luck*, 1902, 1 Ch. 428; 71 L. J. Ch. 239.

As regards property situated in a register county, a purchaser who has searched the register is not bound to inquire whether there are any unregistered deeds (*m*).

Search in register county.

The rule that a person is deemed to have notice of all facts which come to the knowledge of his solicitor in the course of the same transaction (*n*) is founded on the presumption that a solicitor communicates such facts to his client, and does not apply where the fact, with notice of which the client is sought to be charged, is one which the solicitor would certainly conceal, as, *e.g.*, a fraudulent act of his own (*o*). When the mortgagor is himself a solicitor and prepares the mortgage deed, the mortgagee employing no other solicitor, the mortgagor will be considered the agent of the mortgagee in the transaction (*p*).

Notice to solicitor, notice to client.

Exception in case of solicitor's fraud.

Where mortgagor and mortgagee employ the same solicitor the mortgagor's knowledge is not notice to the mortgagee (*q*).

In a case where the purchaser had notice of an equitable mortgage which he required to be discharged, and the vendor's solicitor, who was also the solicitor of the equitable mortgagee, produced the mortgage with what purported to be a receipt in full signed by the equitable mortgagee, but which was in fact forged by the solicitor, it was held that the equitable mortgagee had priority over the purchaser, although the latter had the legal estate (*r*).

Receipt forged by solicitor.

### *Negligence.*

Cases have frequently arisen in which it is sought to postpone a legal mortgage not holding the title deeds to a subsequent equitable mortgagee holding them, on the ground of negligence

Priority, how affected by non-possession of deeds.

(*m*) *Agra Bank v. Barry* (1874), L. R. 7 H. L. 157.

(*n*) Conv. Act, 1882, s. 3 : *Taylor v. London, &c. Co.*, 1901, 2 Ch. 231, 257; 70 L. J. Ch. 477.

(*o*) *Cave v. C.* (1880), 15 Ch. D. 639; 49 L. J. Ch. 505.

(*p*) *Hewitt v. Loosemore* (1851), 9 Hare, 449; 21 L. J. Ch. 69. But see *contra*, *Espin v. Pemberton* (1859), 3 De G. & J. 547; 28 L. J. Ch. 311.

(*q*) *Re Cousins* (1886), 31 Ch. D. 677.

(*r*) *Jared v. Clements*, 1903, 1 Ch. 428; 72 L. J. Ch. 197.

Not lost, unless there is fraud or gross negligence tantamount to fraud.

*Secus*, if any reasonable excuse is given.

Mortgagee authorising mortgagor to raise money by means of deeds will be postponed, though authority is exceeded.

Gross negligence.

on the part of the former. It is settled that non-possession of the deeds will not deprive the legal mortgagee of his priority, unless it appears that he has omitted to obtain them, or has parted with the possession of them under circumstances from which the Court will infer fraud or gross negligence (*s*). If he has inquired for the deeds, and his omission to get them, or his subsequent giving them up to the mortgagor, has arisen from misrepresentation on the part of the latter, by which he has been deceived, or is otherwise explainable, fraud or gross negligence will not be imputed, and the priority will not be lost (*t*).

If a mortgagee gives up the deeds to the mortgagor for the purpose of enabling him to raise money on them, but makes certain conditions, *e.g.*, that a limited sum only shall be raised, or that the second mortgagee shall be informed of the prior security, and the mortgagor transgresses the conditions by borrowing a larger sum than was agreed on (*u*), or by concealing the first mortgage (*r*), the first mortgagee will be postponed to the second one, not on the ground of fraud, but because, having authorised the mortgagor to raise money by means of the deeds, he cannot, as against a person who makes an advance on the faith of the possession of the deeds, insist that the authority has been exceeded (*r*).

To deprive a mortgagee of the protection of the legal estate it is not essential that he should have been guilty of fraud. It is sufficient if he has shown such gross negligence as would render it unjust to deprive the other incumbrancer of his priority (*y*).

In a case where one of two executors of a legal mortgagee gave

(*s*) *Northern Counties, &c. Co. v. Whipp* (1884), 26 Ch. D. 482; 53 L. J. Ch. 629; *Oliver v. Hinton*, 1899, 2 Ch. 264, 274; 68 L. J. Ch. 583; *Taylor v. London, &c. Bk.*, 1901, 2 Ch. 231, 260; 70 L. J. Ch. 477; *Walker v. Linom*, 1907, 2 Ch. 104; 76 L. J. Ch. 500.

(*t*) *Brown v. Steadman* (1896), 44 W. R. 458.

(*u*) *Perry Herrick v. Attwood* (1857), 2 De G. & J. 21; 27 L. J. Ch. 121; *Rimmer v. Webster*, 1902, 2 Ch. 163; 71 L. J. Ch. 627.

(*v*) *Briggs v. Jones* (1870), L. R. 10 Eq. 92.

(*w*) *Brocklesby v. Temperance B. S.*, 1895, A. C. 173; 64 L. J. Ch. 430.

(*y*) *Oliver v. Hinton*, 1899, 2 Ch. 264; 68 L. J. Ch. 583.

up the title deeds to the mortgagor, and thereby enabled him to commit a fraud by executing a mortgage of the same property to a bank, it was held that the other executor, who was the survivor and to whom the legal estate passed, was not on that account to be postponed to the bank (z).

Mere carelessness or want of prudence is not sufficient ground for postponing a legal mortgagee. Thus, where the manager of a company mortgaged his own property to the company, and afterwards abstracted the title deeds from the company's safe by means of a key, which was entrusted to him as manager, and then executed a mortgage to another person and delivered to him the deeds, it was held that the company had not lost their priority (a).

Mere carelessness will not deprive legal mortgagee of priority.

*Priority as between equitable incumbrancers.*

The possession of the legal estate is essential to give to a purchaser or mortgagee priority over trusts or incumbrances of which he has no notice; so that where the interests of all of several incumbrancers are equitable only, either by reason of the legal estate being outstanding, or from the property being of an equitable nature, then if the equities of all parties are in other respects equal, *i.e.*, if there are no special circumstances entitling one of the parties in preference to another to the assistance of the Court, the incumbrances will rank according to their order of date (b). In such a case the rule *qui prior est tempore, potior est jure* applies. Thus, if a mortgagee of an equitable estate, who is in fact a trustee, though not so expressed in the mortgage deed, fraudulently transfers the mortgage to another for valuable consideration, or if a legal mortgagee, who is in fact a trustee, fraudulently deposits the deeds as a security, the transferee or deposittee will take subject to the claims of the beneficiary,

Where neither party has legal estate, priorities of incumbrances are according to their dates.

(z) *Re Ingham*, 1893, 1 Ch. 352; 62 L. J. Ch. 100.

(a) *Northern Counties, &c. Co. v. Whipp* (1884), 26 Ch. D. 482; 53 L. J. Ch. 629.

(b) *Brace v. Marlborough* (1728), 2 P. Wms. 495, 7th Resolution.

assuming that the latter has not been guilty of negligence (*e*). There can be no tacking where all the incumbrances are equitable, so that a third mortgagee gains no advantage by taking a transfer of the first mortgage, where the legal estate is outstanding.

But if one party has by negligence conduced to a fraud, he will be postponed.

But if the party whose right is prior in time has, by his own negligence, conduced to the fraud committed on the other, he will be postponed, as in such case his equity is inferior. Thus, where a vendor conveyed land, and signed a receipt for the purchase-money, which, however, he did not receive, and the title deeds were delivered to the purchaser, who afterwards, deposited them by way of equitable mortgage, the equitable mortgage was held to have priority over the vendor's lien (*d*). Again, when A. was induced by his solicitor to execute a deed, which was in fact a conveyance to the solicitor as on a sale, and to sign the receipt for the purchase-money indorsed on the deed, trusting to his statement that the deed was a mere form, and afterwards the solicitor deposited the title deeds with B. by way of equitable mortgage to secure a debt, B. was held to have priority over A. (*e*).

Whether, as between two equitable mortgagees, the amount of negligence necessary to postpone the one who is prior in time is the same as is required to postpone a legal mortgagee to an equitable one seems doubtful (*f*). The equities of beneficiaries prevail over equities subsequently derived from trustees who have acted in breach of trust (*g*).

Mortgagee of equitable

A mortgagee of an equitable interest in land is not bound to

(*c*) *Cory v. Eyre* (1863), 1 D. J. & S. 149; *Re Richards* (1890), 45 Ch. D. 589; 59 L. J. Ch. 728; *Taylor v. London, &c. Co.*, 1901, 2 Ch. 231; 70 L. J. Ch. 477.

(*d*) *Rice v. R.* (1853), 2 Drew. 73; 23 L. J. Ch. 289; see also *Bickerton v. Walker* (1885), 31 Ch. D. 151; 55 L. J. Ch. 227; *Bateman v. Hunt*, 1904, 2 K. B. 530; 73 L. J. K. B. 782.

(*e*) *Hunter v. Walters* (1871), L. R. 7 Ch. 75; 41 L. J. Ch. 175.

(*f*) *Farrand v. Yorkshire Bkg. Co.* (1888), 40 Ch. D. 182; 58 L. J. Ch. 238; *Taylor v. Russell*, 1892, A. C. 244; 61 L. J. Ch. 657; see *Taylor v. London, &c. Co.*, *sup.*

(*g*) *Capell v. Winter*, 1907, 2 Ch. 376; 76 L. J. Ch. 496.

give notice to the owner of the legal estate, and will not be postponed to a subsequent mortgagee of the equitable interest who has given notice (*h*). But it is desirable to give notice to prevent the legal estate being conveyed to a purchaser without notice. Also notice should be given to any S. L. Act trustees.

estate in land not bound to give notice to owner of legal estate.

SECT. X.—*Mortgages of Things in action and equitable interests in personality.*

A chose in action was formerly inalienable at law. The Jud. Act, 1873, s. 25 (6), provides as follows:—

Any absolute assignment by writing, under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been, effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed) to pass and transfer the legal right to such debt or chose in action, from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor. PROVIDED always that if the debtor, trustee, or other person liable in respect to such debt or chose in action, shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead, or he may pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees.

Assignment of debts and choses in action, when valid at law.

Though the above enactment does not apply to an assignment by way of charge only, yet it includes an assignment subject to a proviso for redemption by way of security (*i*) or to a trustee in trust for the assignor (*h*), so long as such assignment passes the

Meaning of "absolute assignment."

(*h*) *Hopkins v. Hemsworth*, 1898, 2 Ch. 347; 67 L. J. Ch. 526.

(*i*) *Tancred v. Delagoa Bay Co.* (1889), 23 Q. B. D. 239; 58 L. J. Q. B. 459; *Hughes v. Fump House Hotel Co.*, 1902, 2 K. B. 190; 71 L. J. K. B. 630; *Bateman v. Hunt*, 1904, 2 K. B. 530; 73 L. J. K. B. 782.

(*k*) *Comfort v. Belts*, 1891, 1 Q. B. 737; 60 L. J. Q. B. 656; *Fitzroy v. Cave*, 1905, 2 K. B. 364; 74 L. J. K. B. 829.

Meaning of  
"legal chose  
in action."

On mortgages  
of personality  
notice should  
be given to  
trustees.

whole interest in the whole or a definite part of the debt (*l*). The statute does not affect the validity of equitable assignments (*m*). The meaning of the term "legal chose in action" is still unsettled (*n*).

Where the subject of the mortgage is a debt, or personality vested in trustees, or a policy of insurance, notice of the mortgage should be given to the debtor or trustees or insurance office, as the case may be; and if the subject of the mortgage is money to arise from the sale or mortgage of land, notice should be given to the trustees in whom the duty or power of selling or mortgaging is vested, although the time of sale or mortgaging may not have arrived. If such notice is not given, and the debtor or trustees have no knowledge *aliunde* of the existence of the mortgage, the mortgagee will be postponed to a subsequent mortgagee who advances his money without notice of the prior mortgage, and himself gives due notice of his own security (*o*). And this rule applies where the first assignment is made by the beneficiary himself, and the second by his personal representative (*p*).

Notice neces-  
sary to prevent  
debtor from  
paying original  
creditor.

As between assignor and assignee notice is not necessary to perfect an equitable assignment (*q*), but it is necessary as against the debtor or trustee himself; for payment to the original creditor will be a satisfaction of the debt, notwithstanding that the creditor may have assigned it to another for a valuable consideration, if the debtor or trustee has no knowledge of such assignment; and if the debtor has been released in a general

(*l*) *Mercantile Bk. of London v. Evans*, 1899, 2 Q. B. 613; 68 L. J. Q. B. 921; *Jones v. Humphreys*, 1902, 1 K. B. 10; 71 L. J. K. B. 23; *Forster v. Baker* (1910), 79 L. J. K. B. 664.

(*m*) *Brandt's & Co. v. Dunlop Rubber Co.*, 1905, A. C. 454; 74 L. J. K. B. 598; *Re Briggs & Co.*, 1906, 2 K. B. 209; 75 L. J. K. B. 591.

(*n*) See *Dawson v. G. N. & Co.*, 1905, 1 K. B. 260; 74 L. J. K. B. 190.

(*o*) *Darby v. Hall*, and *Loveridge v. Cooper* (1823), 3 Russ. 1, 30; 2 L. J. (O. S.) Ch. 62, 75; *Lee v. Howlett* (1856), 2 K. & J. 531; *Foster v. Cockerell* (1835), 3 Cl. & Fin. 456; *Re Dallas*, 1904, 2 Ch. 385; 73 L. J. Ch. 365.

(*p*) *Re Freshfield* (1879), 11 Ch. D. 198; *Montefiore v. Guedalla*, 1903, 2 Ch. 26; 72 L. J. Ch. 442.

(*q*) *Re Griffin*, 1899, 1 Ch. 408; 68 L. J. Ch. 220.

settlement of accounts, instead of actually paying the money, the release is equally effectual (*r*).

If the debtor or trustee acquires knowledge of an incumbrance *aliunde*, and in such manner as to fix him with the consequences of acting contrary to it, the incumbrancer is entitled to priority over a subsequent assignee, just as if he had himself given a proper notice (*s*). Notice acquired *aliunde* effective.

Before advancing his money on the security of a chose in action or equitable interest in a fund vested in trustees, the intending mortgagee should inquire of the debtor or trustee, and, in case of a policy of assurance, of the assurance office, whether notice has been received of any prior incumbrance. If, however, he neglects to make such inquiry, but gives notice of his own security, he will not, on account of his neglect to inquire, be postponed to a prior incumbrancer who has given no notice, because the inquiry, if made, would not have given him the necessary knowledge. Intended mortgagee should inquire of trustee as to prior incumbrances.

A trustee is not bound to answer inquiries made by a person about to advance money to the beneficiary; if he does answer them honestly to the best of his belief, he is not liable should it turn out afterwards that he has forgotten an incumbrance of which he had received notice, unless he has expressed himself so as to create an estoppel (*t*). Trustee not bound to answer inquiries.

Under the existing bankruptcy law, things in action, other than debts due or growing due to the bankrupt in the course of his business, are not to be deemed goods within his order and disposition (*u*). And the term "things in action" includes policies of assurance (*x*), a share in a partnership business (*y*), and shares or debentures of companies (*z*). Provision of Bankruptcy Act, 1883, as to things in action.

(*r*) *Stocks v. Dobson* (1853), 4 D. M. & G. 11; 22 L. J. Ch. 884.

(*s*) *Ward v. Duncombe*, 1893, A. C. 369; 62 L. J. Ch. 881.

(*t*) *Low v. Bouverie*, 1891, 3 Ch. 82; 60 L. J. Ch. 594; *Porter v. Moore* 1904, 2 Ch. 367; 73 L. J. Ch. 729.

(*u*) Bankr. Act, 1883, s. 44 (iii.).

(*x*) *Exp. Ibbetson* (1878), 8 Ch. D. 519.

(*y*) *Re Bainbridge* (1878), 8 Ch. D. 218; 47 L. J. Bk. 70.

(*z*) *Colonial Bank v. Whinney* (1886), 11 A. C. 426; 56 L. J. Ch. 43.

Trustee in bankruptcy not giving notice postponed.

The effect of bankruptcy as regards a thing in action is to vest it in the trustee as if it had been assigned to him; and as an adjudication in bankruptcy is not in itself notice, a trustee in bankruptcy, not giving notice to the debtor, will be postponed to a subsequent assignee for value who gives such notice (*a*).

Notice to one trustee, how far effective.

A notice of an incumbrance given to one of several trustees is effective to this extent—that the mortgagee giving it has priority over a second mortgagee who gives notice to all the trustees, if at the date of the second mortgage the person to whom the first notice was given still remains a trustee, though he may afterwards die, the reason being that the second mortgagee ought to have inquired of all the trustees including the one to whom the first notice was given (*b*). The reason does not apply where the trustee to whom the first notice was given dies or retires before the date of the second mortgage. In such a case the second mortgagee gains a preference, because under the altered circumstances inquiry of all the existing trustees would not have led to a disclosure of the first mortgage (*c*). Hence, notice should always be given to all the trustees.

Notice to all the trustees sufficient, though all die before second mortgage.

If, however, a mortgagee gives notice to all the trustees in existence at the date of his mortgage, he is under no obligation to give any further notice, and is consequently entitled to priority over a subsequent mortgagee who takes his mortgage after the death or retirement of all such trustees and who gives notice to the new trustees (*d*).

Notice to trustee if assignor insufficient.

The rule that notice given to one of several trustees is to a certain extent effective does not apply if the trustee to whom it was given is himself the assignor (*e*).

Notice to solicitor of trustees.

A solicitor acting for trustees in the management of the trust

(*a*) *Palmer v. Locke* (1881), 18 Ch. D. 381; 51 L. J. Ch. 124.

(*b*) *Ward v. Duncombe*, 1893, A. C. 369; 62 L. J. Ch. 881.

(*c*) *Re Phillips*, 1903, 1 Ch. 183; 72 L. J. Ch. 94.

(*d*) *Re Wasdale*, 1899, 1 Ch. 163; 68 L. J. Ch. 117.

(*e*) *Browne v. Savage* (1859), 4 Drew. 635; *Lloyds Bank v. Pearson*, 1901, 1 Ch. 865; 70 L. J. Ch. 422; *Re Dallas*, 1904, 2 Ch. 385, 400; 73 L. J. Ch. 365.

has no implied authority to receive notices on their behalf. A notice given to the solicitor is ineffective unless it is communicated by him to the trustees either verbally or in writing (*f*).

If a reversionary fund under a settlement is made the subject of a derivative settlement, and a beneficiary under the derivative settlement charges or otherwise disposes of his share, notice of the charge should be given to the trustees of the derivative settlement. Notice to the trustees of the original settlement will be ineffectual (*g*).

Notice to trustees of derivative settlement.

The Policies of Assurance Act, 1867, s. 3, provides that no assignment shall confer on the assignee a right to sue for the policy money until a written notice in the form prescribed by the Act is given to the company at their principal place of business, and that the date on which such notice is received shall regulate the priority of all claims under any assignment. This enactment applies only as between the insurance office and the persons interested in the policy, and does not affect the rights of those persons among themselves. Accordingly, where a first incumbrancer on a policy has not given the notice required by the Act, and a second incumbrancer with notice of the first has given such notice, the second does not thereby obtain priority (*h*). So a trustee in bankruptcy (who takes subject to all equities) cannot gain priority over an equitable mortgagee for value of the bankrupt's life policy merely by giving prior notice (*i*).

30 & 31 Vict. c. 144.

Notice of assignment of policy of assurance.

Notice before a fund has come into existence, to a person who is merely a potential future trustee, is ineffectual. Thus, notice of a covenant to pay to covenantees the proceeds of a commission in the army, given to the army agent before a sale was actually made, was held to be ineffectual (*k*).

Effect of notice before fund has come into existence.

---

(*f*) *Saffron Walden B. S. v. Rayner* (1880), 14 Ch. D. 406; 49 L. J. Ch. 465.

(*g*) *Stephens v. Green*, 1895, 2 Ch. 148; 64 L. J. Ch. 546.

(*h*) *Newman v. N.* (1885), 28 Ch. D. 674; 54 L. J. Ch. 598.

(*i*) *Re Wallis*, 1902, 1 K. B. 719; 71 L. J. K. B. 465.

(*k*) *Buller v. Plunkett* (1860), 1 J. & H. 441; 30 L. J. Ch. 641; *Somerset v. Cox* (1865), 33 Beav. 634; 33 L. J. Ch. 490.

New trustees not bound to inquire of old trustees whether they have received notice of incumbrances.

New trustees of trust funds in settlement are not bound to inquire of the old trustees whether they have received any notices of dealings by the beneficiaries (*l*). If, therefore, a mortgagee from a beneficiary gives notice to the then trustees, and the latter retire and do not pass on the notice to the new trustees, the mortgagee, even though under no obligation to give any further notice (*m*), runs some risk that the new trustees may distribute the trust fund without knowledge of, and therefore without reference to, his claim.

Notice should be given to all the trustees, and also to new trustees.

It follows that a mortgagee should give notice to all the trustees in existence at the date of his mortgage, and if he becomes aware that there has been a change of all the trustees, he should give a further notice to the new trustees in order to prevent them from distributing the fund without reference to his claim.

Notice in lieu of *distringas*.

Where the subject of a mortgage is the beneficial interest of the mortgagor in stock in the funds, or stock, shares, or securities in a public company, the mortgagee should give to the Bank of England, or to the company, the notice substituted for a *distringas* by the R. S. C., 1883, O. 46.

Stop order, when fund is in Court, gives priority.

Where money or securities are in Court, the mortgagee should obtain a stop order. An incumbrancer who does not obtain a stop order will be postponed to a subsequent incumbrancer who obtains one, unless the latter had notice of the first incumbrance when he took his security and paid the money. If he had no such notice at that time, the fact that he acquires notice before he obtains the stop order does not deprive him of his priority (*n*).

(*l*) *Phipps v. Lorcgrove* (1873), L. R. 16 Eq. 80; 42 L. J. Ch. 892.

(*m*) *Re Wasdale*, 1899, 1 Ch. 163; 68 L. J. Ch. 117.

(*n*) *Re Holmus* (1885), 29 Ch. D. 786; 55 L. J. Ch. 33; *Mutual Life Assce. Soc. v. Langley* (1886), 32 Ch. D. 460; 53 L. J. Ch. 996; *Montefiore v. Guedalla*, 1903, 2 Ch. 27; 72 L. J. Ch. 442; see also as to a sub-settlement, *Stephens v. Green*, 1895, 2 Ch. 148; 64 L. J. Ch. 546. As to the practice in obtaining stop orders, see Seton, 6th ed., 491 *et seq.*; R. S. C. 1883, O. 46; *Re Toogood*, 1887, W. N. 109.

SECT. XI.—*Transfers of mortgages and reconveyances.*

The usual form of a simple transfer of mortgage is—first, an assignment of the mortgage debt (*o*); and, secondly, a conveyance of the mortgaged property to the transferee, subject to the right of redemption subsisting under the mortgage deed.

Usual form of transfer of mortgage.

A person advancing money on the security of a transfer of a mortgage should make the mortgagor a party to the deed, if his concurrence can be obtained, for the purpose of admitting that the mortgage money remains due.

Mortgagor should be made party to transfer.

If the mortgagor does not concur, notice of the transfer should be given to him, for if a mortgage is transferred without the privity of the mortgagor, the transferee takes subject to the state of the account between the mortgagor and the original mortgagee and to all equities subsisting between them, and payments made by the mortgagor to the original mortgagee after, but without notice of, a transfer are good against the transferee (*p*).

Effect of transfer without concurrence of mortgagor.

If a mortgagee transfers a mortgage without the concurrence of the mortgagor and without calling on him to redeem, he cannot add the costs of the transfer to the mortgage debt (*q*).

Costs of transfer.

If a further sum is at the time of the transfer advanced by the transferee to the mortgagor, it is usual to convey the property free from the old proviso for redemption, and subject to a new one with new covenants for payment, the old mortgage debt being at the same time transferred as a protection against mesne incumbrances (if any). This does not affect the stamp duty.

Form of deed where transferee makes a further advance.

The Conv. Act, 1881, gives a statutory force to some short forms of statutory mortgage transfer and reconveyance given in

Statutory forms.

(*o*) The Jud. Act, 1873, s. 25 (6), enables the transferee to sue the mortgagor for the debt.

(*p*) *Dixon v. Finch*, 1900, 1 Ch. 742; 69 L. J. Ch. 465; *Turner v. Smith*, 1901, 1 Ch. 213; 70 L. J. Ch. 144.

(*q*) *Re Radcliffe* (1856), 22 Beav. 201.

a schedule ; but in order that a statutory transfer may have the statutory effect the mortgage transferred must have been a statutory mortgage (*r*).

Plan to be adopted on a transfer of mortgage of copyholds.

Where copyholds are the subject of a mortgage, and there has been a conditional surrender of them to the mortgagee, but (as is usual) no admittance on such surrender, the ordinary and proper mode of effecting a transfer is for the mortgagor to make a new conditional surrender to the transferee, satisfaction being at the same time entered up in regard to the old surrender. If, however, the concurrence of the mortgagor cannot be obtained, it is necessary, in order to vest a legal interest in the transferee, that the transferor should be admitted tenant on the original surrender, and should then surrender again to the transferee, subject to the mortgagor's right of redemption ; but this proceeding would, in many cases, involve considerable expense in the way of fines and fees to the lord and steward, and to avoid it a transferee may sometimes be advised to accept a declaration of trust by the transferor of the benefit of the original surrender.

Mortgagor entitled to a reconveyance on payment of mortgage debt.

Upon payment of principal, interest, and costs, the mortgagor is entitled to a reconveyance at his own expense of the mortgaged property. If the mortgage is of freeholds, and the mortgagee died after 1881, the legal estate will have passed to his legal personal representative, who will be the proper person to reconvey. If the mortgagee die before 1882, the legal estate vested in his heir or devisee ; but his legal personal representative has power to reconvey (*s*).

Legal personal representative can reconvey freeholds.

Vesting order in case of lunatic mortgagee.

Course to be adopted on satisfaction of mortgage of copyholds.

Where a mortgagee becomes lunatic, a vesting order, or an order appointing a person to convey, must be obtained in lunacy (*t*).

Where the mortgage is of copyholds, and the mortgagee has not been admitted, it is sufficient to enter up satisfaction on the

(*r*) Conv. Act, 1881, ss. 26—29; *Re Beachey*, 1904, 1 Ch. 67 ; 73 L. J. Ch. 68.

(*s*) See Conv. Act, 1881, s. 30 ; V. & P. Act, 1874, s. 4. As to the death of a mortgagee of copyholds, see Wolst. Conv. Acts, 9th ed., notes to these sections, and the Cop. Act, 1894, s. 88.

(*t*) Lunacy Act, 1890, s. 135.

court rolls of the conditional surrender and a warrant for this purpose should be given to the steward. If he has been admitted, a surrender to the use of the mortgagor will be necessary.

Where a mortgage of freeholds is for a long term of years only, it is usual to have a surrender on the mortgage being paid off; but a receipt in full indorsed on the deed will have the same legal effect, as, by the Satisfied Terms Act, 1845, the term, being satisfied by payment, will cease.

Of mortgage for a term carved out of freeholds.

On the discharge of a mortgage of leaseholds the term must be surrendered or reassigned according to whether the mortgage was by sub-demise or assignment. The Satisfied Terms Act does not apply in this case.

Of mortgage of leaseholds.

The Conv. Act, 1881, s. 15, enacts that where a mortgagor is entitled to redeem he shall have power to require the mortgagee, not being a mortgagee who is or has been in possession, instead of reconveying and on the terms on which he would be bound to reconvey, to assign the mortgage debt and convey the mortgaged property to any third party, as the mortgagor directs; and the Conv. Act, 1882, s. 12, declares that this right shall belong to and be capable of being enforced by each incumbrancer or by the mortgagor, notwithstanding any intermediate incumbrance, but that a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and that, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer.

Mortgagor redeeming may require transfer instead of reconveyance.

Where a tenant for life of the equity of redemption had failed to keep down the interest, and the remainderman had taken a transfer of the mortgage and brought an action for foreclosure, the Court ordered that, on the tenant for life redeeming, the property should be reconveyed to him on certain terms, and refused to order a transfer to his nominee under the above enactment, because such transfer would have been inconsistent with those terms (x).

Case in which Court refused to order a transfer.

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(x) *Alderson v. Elgey* (1884), 26 Ch. D. 567.

SECTION XII.—*Stamps.*

Stamps on mortgages.

By the Stamp Act, 1891, First Schedule, the following duties are imposed, viz. :—

MORTGAGE, BOND, DEBENTURE, COVENANT (except a marketable security otherwise specially charged with duty), and WARRANT OF ATTORNEY to confess and enter up judgment ;

(1.) Being the only or principal or primary security (other than an equitable mortgage) for—

|   | £ | s. | d. |
|---|---|----|----|
| The payment or repayment of money not exceeding £10   | 0 | 0  | 3  |
| Exceeding £10 and not exceeding £25 . . . . .         | 0 | 0  | 8  |
| "        25                    "        50 . . . . .  | 0 | 1  | 3  |
| "        50                    "        100 . . . . . | 0 | 2  | 6  |
| "        100                   "        150 . . . . . | 0 | 3  | 9  |
| "        150                   "        200 . . . . . | 0 | 5  | 0  |
| "        200                   "        250 . . . . . | 0 | 6  | 3  |
| "        250                   "        300 . . . . . | 0 | 7  | 6  |
| "        300  |   |    |    |

For every £100, and also for any fractional part of £100, of the amount secured . . . . . 0 2 6

(2.) Being a collateral, or auxiliary, or additional, or substituted security (other than an equitable mortgage), or by way of further assurance for the above-mentioned purpose when the principal or primary security is duly stamped ;

For every £100, and also for any fractional part of £100, of the amount secured . . . . . 0 0 6

By the Revenue Act, 1903, s. 7, the whole amount of duty payable under this paragraph is not to exceed 10s. The section is not retrospective (*y*).

£ s. d.

(3.) Being an equitable mortgage ;

For every £100, and any fractional part of £100, of the amount secured . . . . . 0 1 0

(4.) TRANSFER, ASSIGNMENT, DISPOSITION, OR ASSIGNATION of any mortgage, bond, debenture, or covenant (except a marketable security), or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment ;

(*y*) *Suffield v. I. R. Commrs.*, 1908, 1 K. B. 865 ; 77 L. J. K. B. 746. The stamp duties on marketable securities are doubled by Fin. (1909-10) Act, 1910, s. 76.

£ s. d.

For every £100, and also for any fractional part of £100,  
of the amount transferred, assigned, or disposed,  
exclusive of interest which is not in arrear . . . . . 0 0 6

And also where any further money is added to the { The same duty as a  
money already secured . . . . . } principal security for  
such further money.

(5.) RECONVEYANCE, RELEASE, DISCHARGE (z), SURRENDER,  
RE-SURRENDER, WARRANT TO VACATE, OR RENUNCIATION of  
any such security as aforesaid, or of the benefit thereof, or  
of the money thereby secured ;

For every £100, and also for any fractional part of £100,  
of the total amount or value of the money at any  
time secured . . . . . 0 0 6

Ss. 86 to 88 of the Act are also material in connexion with  
stamps on mortgages.

Under s. 15 of the Act, the person liable to pay the fine for  
not stamping a deed is in the case of a mortgage the mort-  
gagee, and in the case of a transfer of a mortgage or a re-  
conveyance the transferee or the person redeeming the security.

Fine for not  
stamping  
mortgage,  
transfer or  
reconveyance.

The Building Societies Act, 1836, is repealed by the B. S.  
Act, 1894, s. 25 (2), as to all societies certified thereunder after  
1856, as from the 25th August, 1896.

Mortgages to  
building  
societies.

Societies incorporated under the B. S. Act, 1874, are not  
exempt from stamp duty on mortgages: s. 41. The Act of  
1874 also repealed the B. S. Act, 1836, except as to then sub-  
sisting societies, until they were incorporated under the Act of  
1874: s. 7.

Increment value duty is not payable on a mortgage, but  
attaches when the mortgagee sells, or, being in possession, leases  
the property for more than fourteen years (a).

Increment  
value duty.

Where the mortgagee of a reversion or a lease forecloses

Reversion  
duty.

(z) An acknowledgment indorsed on a trust deed that all debenture stock  
thereby secured had been "redeemed, paid off, and satisfied" is not a  
"discharge" within the schedule: *Firth & Sons v. I. R. Commrs.*, 1904, 2  
K. B. 205; 73 L. J. K. B. 632.

(a) Fin. (1909-10) Act, 1910, ss. 1, 4 (4); and generally as to the position  
of mortgagees in regard to the duties on land values, see Napier, pp. 186  
*et seq.*

reversion duty is payable on the benefit accruing only as from the date of foreclosure to the determination of the lease (*b*).

Power to add  
duties to  
security.

Where a mortgagee pays increment value or reversion duty he can add the amount paid to his security (*c*).

---

(*b*) Fin. (1909-10) Act, 1910, s. 14 (5).

(*c*) *Ib.*, s. 39 (4).

# DIVISION III.

## MORTGAGES AND INSTRUMENTS RELATING TO MORTGAGES.

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### PART I.

#### LIST OF FORMS IN MORTGAGES, &c.

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WHEREAS the Borrower is seised in fee simple in possession free from incumbrances of the freehold hereditaments hereinafter described :

No. 1.

Recital of  
seisin of  
Borrower.

No. 1A.

WHEREAS these presents are supplemental to an Indenture of Mortgage (hereinafter called the Principal Indenture) dated —, and made between, &c., whereby in consideration of the sum of £— [the Borrower conveyed] [*or if the Borrower is not a party*] certain freehold hereditaments known as the — Estate, in the County of — [were conveyed] to the [*original Mortgagees*] in fee simple by way of mortgage for securing payment to them [on a joint account] of the principal sum of £—, with interest thereon at the rate of £— per cent. per annum [*or in the case of Copyholds, the Borrower covenanted to surrender to the use of the [original Mortgagees] and their heirs certain hereditaments, copyhold of the Manor of —, subject to a condition for making void such surrender on payment on a day therein mentioned of a sum of £— and interest thereon at the rate of £— per cent. per annum, or subject to a condition for making void such surrender corresponding to the proviso for redemption relating to the said freehold hereditaments*] [*or in the case of Leaseholds, the Borrower demised certain leasehold hereditaments at — comprised in the Lease recited in the Principal Indenture to the [original Mortgagees] for the residue of the term of — years from the — day of —, 18—, created by the said Lease, except the last — days of the said term, by way of mortgage for securing payment to them of the principal sum of £—, with interest thereon at the rate of £— per cent. per annum, And the principal Indenture contained a declaration of trust (subject to the right of redemption thereunder) of the head term created by the said Lease in favour of the [original*

Recital of a  
Mortgage in a  
Transfer.

(i.) Freeholds.

(ii.) Copy-  
holds.

(iii.) Lease-  
holds.

*Mortgagees*] and a power for them by deed to remove the Borrower from being a Trustee and to appoint a new Trustee [*or* and an irrevocable power of attorney to assign the head term] as therein mentioned] (a) :

## No. 2.

Recital of a  
Transfer of a  
Mortgage.  
(i.) Freeholds.

(ii.) Copy-  
holds.

(iii.) Lease-  
holds.

AND WHEREAS by an Indenture of Transfer dated —, and made between, &c., the said mortgage debt of £——, with the interest thereon, was assigned to the [*Transferees*] absolutely, and the freehold hereditaments comprised in the Principal Indenture were conveyed to the use of [*the Transferees*] in fee simple, subject to the right of redemption subsisting therein under the Principal Indenture [*or in the case of copyholds*, and the [*Transferors*] assigned to the [*Transferees*] the benefit of the covenant to surrender the copyhold hereditaments mentioned in the Principal Indenture, subject to the right of redemption subsisting therein] (b) [*or in the case of leaseholds*, and the [*Transferors*] assigned to the [*Transferees*] the premises comprised in the Lease recited in the Principal Indenture for the residue of the derivative term of — years from the — day of —, 18—, less the last — days created by the Principal Indenture, subject to the right of redemption subsisting under that Indenture and

Recital where  
deed is  
supplemental  
to several  
documents.

(a) Where it is desired to make the deed supplemental to several documents the recital will run thus:—

WHEREAS these presents are supplemental to the following Indentures, namely [*or* to the several Indentures mentioned in the — Schedule hereto], First, an Indenture of Mortgage, &c. (*as in text*) ; Secondly, an Indenture of Further Charge dated, &c. (whereby the said hereditaments were charged with the payment to the said — of the further sum of £—— and interest at the rate aforesaid) ; And, thirdly, an Indenture of Transfer dated, &c. (whereby the aggregate principal sum of £—— secured by the Principal Indenture and Further Charge and the interest thereon were assigned to — and the said hereditaments were conveyed to — in fee simple, subject to the right of redemption subsisting therein under the Principal Indenture and Further Charge).

Variation if  
there has been  
a conditional  
surrender.

(b) If the borrower has surrendered to the use of the original mortgagees, then in the transfer they will covenant that they will be admitted, and then surrender to the use of the transferees and their heirs, *cf.* Form No. 10.

together with the benefit of the declaration of trust of the head term contained in the Principal Indenture [(c) and the [*Transferees*] thereby removed the Borrower from being a trustee of the said head term, and appointed [*a new Trustee*] to be a Trustee in his place] (d):

AND WHEREAS the Mortgagees have agreed to advance to the Borrower the sum of £—— (out of money belonging to them on a joint account (e)) upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing:

No. 2A.

---

 Agreement for advance.

AND WHEREAS (*as in last form, saying* the further sum of £—— *and adding at end*), and also upon having the said sum of £—— due under the Principal Indenture and the interest thereon further secured as hereinafter appearing:

No. 2B.

---

 The like in a Further Charge where further security is given.

AND WHEREAS the [*Transferees*] have agreed at the request of the Borrower to pay to the said [*Transferees*] the said sum of £—— and to advance to the Borrower the further sum of £—— upon having the payment of the aggregate sum of £——, with interest as hereinafter mentioned, secured in manner hereinafter appearing:

No. 2C.

---

 The like in a transfer where there is a further advance.

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows:—

No. 3.

---

 Preliminary clause; consideration.

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagees to the Borrower (the receipt of which sum the Borrower hereby acknowledges),

THE Borrower hereby covenants with the Mortgagee[s] (f) to pay to him [them] on the —— day of —— next [*generally six*]

No. 4.

---

 Covenant for payment of principal.

(c) This will only be added to the recital where such an appointment is made.

(d) For recitals as to title generally, see List of Forms in Purchase Deeds, Sect. I., p. 288, *sup.*

(e) No joint account clause is required: Conv. Act, 1881, s. 61.

(f) The representatives of the covenantor are bound without being mentioned, the heirs by Conv. Act, 1881, s. 59, and the executors or administrators by the common law: Wms. Exors., 10th ed., 1346. The assigns of the covenantor are not mentioned in this and similar covenants

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 Heirs, executors, &c., of covenantor omitted.

*calendar months from date of deed*] the sum of £—, with interest thereon from the date hereof at the rate of £— per cent. per annum.

No. 5. [In case of further advances add :

Further  
advances (g),

AND ALSO on whichever of the half-yearly days hereby fixed for payment of interest shall happen next after any further money shall be advanced by or become due (other than for interest) to the Mortgagee[s] under these presents, to pay to him [them] the amount thereof, with interest thereon at the rate aforesaid from the day of the same being advanced or becoming due ; ]

No. 6.

and interest.

AND ALSO so long as any principal money remains due under these presents (h) after the said ——— day of ——— next, to pay to

because they are personal covenants. The mention of the assigns of the covenantor has no force except in real covenants, the burden of which is intended to be thrown on the assignee or the land, see *Wolst. Conv. Acts*, 9th ed., 123, 124. As to the meaning of "assigns," see *Re Watts* (1882), 22 Ch. D. 5 ; 52 L. J. Ch. 209.

Heirs, execu-  
tors, &c., of  
covenantee  
omitted.

This covenant is by *Conv. Act*, 1881, s. 58 (2), deemed to be made with the executors, administrators and assigns of the covenantee. Where the covenant relates to lands of inheritance, it is deemed to be made with the heirs and assigns of the covenantee: sub-s. 1 ; but it is best to define the land with which the benefit of the covenant is intended to run: *Rogers v. Hosegood*, 1900, 2 Ch. 388 ; 69 L. J. Ch. 652 ; and generally on this section, see *Wolst. Conv. Acts*, 9th ed., 123. Covenantee includes covenantees, see *Interpretation Act*, 1889, s. 1. The assignee of a personal covenant can now sue on the covenant : *Jud. Act*, 1873, s. 25 (6).

Survivors.

By *Conv. Act*, 1881, s. 60, a covenant with two or more jointly includes an obligation for the benefit of the survivor or survivors and any other person to whom the right to sue on the covenant devolves ; hence it is unnecessary to mention the survivors or survivor.

(g) A further advance must not be made after notice of a subsequent incumbrance, even though there is a covenant to make such further advance : *West v. Williams*, 1899, 1 Ch. 132 ; 68 L. J. Ch. 127 ; notice to one of two joint mortgagees is sufficient : *Freeman v. Laing*, 1899, 2 Ch. 355 ; 68 L. J. Ch. 586 ; and *cf.* *Re Phillips*, 1903, 1 Ch. 183 ; 72 L. J. Ch. 94.

Merger of debt  
in judgment.

(h) A personal covenant to pay interest on the mortgage debt is merged in a judgment recovered by the mortgagee for principal and interest. He cannot then recover interest at a higher rate than 4 p. c. p. a. : *Re European Central Ry. Co.* (1876), 4 Ch. D. 33 ; 46 L. J. Ch. 57 ; *Ex p. Fewings* (1883), 25 Ch. D. 338 ; 53 L. J. Ch. 545 ; *Arbuthnot v. Bunsillall* (1890), W. N. 37. But

the Mortgagee[s] interest thereon at the rate aforesaid, by equal half-yearly payments on the — day of — and the — day of — in every year.

THE Borrowers, and as separate covenants, every two and three [*and so on*] (i) of them hereby jointly covenant and each of them hereby covenants with the Mortgagee[s] to pay to him [them] on the — day of — next the sum of £—, with interest thereon from the date hereof at the rate of £— per cent. per annum, and also so long as, &c. (*continue as in last form*) [*or where there are only two borrowers*, The Borrowers hereby jointly and severally covenant with the Mortgagee[s] to pay, &c., as above].

No. 7.

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 Joint and several covenants.

For the consideration aforesaid the Borrower, As Beneficial Owner, hereby conveys unto the Mortgagee[s]

No. 8.

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 Conveyance of freeholds by way of mortgage.

ALL THAT, &c. (k),

To HOLD unto and To THE USE of the Mortgagee[s] in fee simple, subject to the proviso for redemption hereinafter contained (that is to say) (l).

PROVIDED ALWAYS, that on payment on the — day of — next [*the day mentioned in Form No. 4*] [*or in the case of further advances*, the time or times hereinbefore fixed for the payment thereof] by the Borrower or the persons deriving title under him to the Mortgagee[s] (m) or the persons deriving title under him [them] of the sum of £—, with interest thereon from the date hereof at the rate of £— per cent. per annum :

No. 9.

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 Proviso for redemption of freeholds and leaseholds.

*scus* where there is a distinct covenant to pay interest during the continuance of the security: *Popple v. Sylvester* (1882), 22 Ch. D. 98; 52 L. J. Ch. 54; *Lowry v. Williams*, 1895, 1 I. R. 274; *Economic, &c. Socy. v. Usborne*, 1902, A. C. 147; 71 L. J. P. C. 34.

Under this covenant arrears of interest may be recovered without calling in the principal.

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 Arrears of interest.

(i) Though a covenant be expressed to be several, or joint and several, a plaintiff may join as parties to the same action all or any of the covenantors: R. S. C. 1883, O. 16, r. 6; *Lloyd v. Dimmock* (1878), 7 Ch. D. 398; 47 L. J. Ch. 398.

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 Liability under joint and several covenants.

(k) For parcels, see Forms in Purchase Deeds, Sect. II., *sup.*

(l) For provisos for redemption, see next three Forms.

(m) As to the effect of payment to one of two joint mortgagees, see *Powell v. Brothurst*, 1901, 2 Ch. 160; 70 L. J. Ch. 587.

No. 9A. *[In case of further advances add :*Where  
further  
advance.

AND ALSO of all other principal money (if any) advanced or to become due under these presents and interest thereon at the rate aforesaid from the day of the same being advanced or becoming due.]

## No. 9B. THE premises hereinbefore conveyed [demised] [assigned] shall at the request and cost of the Borrower or the persons deriving title under him be duly reconveyed [surrendered] [reassigned] to him or them (u)

For recon-  
veyance &c.

## No. 10. FOR the consideration aforesaid the Borrower, As Beneficial Owner (o), hereby covenants with the Mortgagee[s] [and with each of them] that the Borrower and all other necessary parties (if any) will forthwith, at the cost of the Borrower, surrender into the hands of the lord [or lady] of the Manor of —, in the County of —, according to the custom of that Manor,

Covenant to  
surrender  
copyholds by  
way of  
mortgage.

ALL THAT, &c., situated, &c., to which hereditaments the Borrower was admitted tenant at a court held for the said Manor on the — day of —,

TO THE USE of the Mortgagee[s] and his [their] heirs (p) according to the custom of the said Manor at and under the accustomed rents, fines, suits and services,

Condition  
creating right  
of redemption.

SUBJECT, nevertheless, to a condition for making void the said surrender (q) on payment on the — day of — next by the Borrower or the persons deriving title under him to the Mortgagee[s] or the persons deriving title under him [them] of the sum of £—, with interest thereon from the date hereof at the rate of £— per cent per. annum.

*[Add in case of further advances, Form No. 9A, sup.]*

(u) A proviso for redemption may be shortened by reference to the covenant for payment, but it is more convenient that the proviso should be complete in itself.

(o) See Conv. Act, 1881, ss. 2 (v.), 7 (5).

(p) The word "heirs" is still necessary in a surrender of copyholds.

Variation  
where free-  
holds are also  
mortgaged.

(q) Or where freeholds are also mortgaged substitute here:—"Corresponding to the proviso for redemption hereinbefore contained with reference to the freehold hereditaments hereinbefore conveyed."

THE Borrower hereby covenants with the Mortgagee[s] that the premises hereinbefore covenanted to be surrendered shall henceforth stand charged with the payment of all money intended to be hereby secured (*r*): And that until surrender the Borrower and all persons deriving title under him will stand possessed thereof, In trust for the Mortgagee[s] and his [their] heirs and assigns, and to dispose of the same as he [they] or the persons deriving title under him [them] shall direct, but subject to such right of redemption as would be subsisting therein if the same had been surrendered:

No. 10A.

Charge on copyholds, and declaration of trust until surrender.

FOR the consideration aforesaid the Borrower hereby irrevocably appoints the Mortgagee[s] [and each of them] and the persons deriving title under him [them] or his [*or their*] substitute or substitutes to be the attorney and attorneys of the Borrower for him, and in his name and on his behalf to sign, grant or otherwise effect either in or out of Court any surrender for giving effect to the foregoing covenant or for vesting the said copyhold hereditaments in a purchaser or any other person (*s*).

No. 10B.

Appointment of Mortgagee[s] as attorney[s] to surrender the copyholds.

FOR the consideration aforesaid the Borrower, As Beneficial Owner, hereby grants and demises unto the Mortgagee[s]

No. 11.

Sub-demise of leaseholds by way of mortgage.

ALL the premises comprised in and demised by the recited Lease, To HOLD unto the Mortgagees for the residue of the term granted by the said Lease except the last three days thereof (*t*), but subject to the proviso for redemption hereinafter contained:

[*To follow demise of leaseholds:*]

No. 11A.

THE Borrower hereby covenants with the Mortgagee[s] and with each of them] that the Borrower and the persons deriving

Trust of principal term in mortgage by sub-demise.

(*r*) This covenant operates as a charge which enables a sale under the statutory power of sale. This power is conferred only under a mortgage or charge by deed: Conv. Act, 1881, s. 19, and s. 2 (vi.). The legal estate must be got in under the T. Act, 1893, or otherwise.

(*s*) This power of attorney should always be given unless the borrower surrenders at once to the use of the mortgagees.

(*t*) As to the position of the mortgagee if the trustee in bankruptcy of the borrower disclaims the lease, see, *Re Baker*, 1901, 2 K. B. 628; 70 L. J. K. B. 856; *Re Carter and Ellis*, 1905, 1 K. B. 735; 74 L. J. K. B. 442; *Re Holmes*, 1908, 2 K. B. 812; 77 L. J. K. B. 1129. The official receiver may disclaim: *Re Cohen*, 1905, 2 K. B. 704; 74 L. J. K. B. 864.

title under him will henceforth stand possessed of the premises comprised in the said Lease for the residue of the term thereby granted In trust for the Mortgagee[s] and the persons deriving title under him [them] and to assign and dispose of the same as [he or] they shall from time to time direct, but subject to the proviso for redemption hereinafter contained (*u*).

## No. 11b.

Power to appoint new Trustee.

THE Mortgagee[s] and the persons deriving title under him [them] shall have power by writing to remove the Borrower or the persons deriving title under him from being trustee or trustees, and upon such removal and on every other occasion to appoint a new trustee or trustees for the purpose of the trust aforesaid and as if in the case of removal the Trustee removed were dead (*x*).

## No. 11c.

Appointment of mortgagee[s] as attorney[s] to assign principal term.

For the consideration aforesaid the Borrower hereby irrevocably nominates and appoints the Mortgagee[s] [and each of them] and the persons deriving title under him [them] or their or his substitute or substitutes to be the attorney and attorneys of the Borrower for him and in his name and on his behalf and as his act and deed to sign, seal and deliver, and otherwise perfect any deed of assignment of the term granted by the recited Lease which may be required in order to vest in a Purchaser or any other person the residue of the term granted by that Lease (*y*).

(Add proviso for redemption, Forms Nos. 9, 9A (if required) and 9B, *sup*.)

Vesting order, limited administration.

(*u*) This clause makes the mortgagor a trustee for the mortgagee on foreclosure as well as on sale. Where the mortgagor merely covenants to assign, it is questionable whether a vesting order can be obtained: *Re Property* (1853), 22 L. J. Ch. 948. On the death of the mortgagor intestate and insolvent, administration limited to the nominal reversion can be granted: *In re Kingdell* (1899), 81 L. T. 461.

(*x*) This form makes it unnecessary to insert a power of attorney to assign (though it is convenient to insert both forms) and enables a vesting declaration to be made under T. Act, s. 12, see *London and County Bk. v. Goddard*, 1897, 1 Ch. 642; 66 L. J. Ch. 261, where the form was held effectual.

Power of attorney.

(*y*) See the last note. How far the power can be given to the assigns of the mortgagee has not been decided, but it is becoming a general practice to attempt this. As this power of attorney is merely in aid of and incident to the security, it is considered that a further 10s. stamp is not necessary. An irrevocable power of attorney can be given under Conv.

PROVIDED ALWAYS, that on payment on the — day of — No. 12.  
 next by the Borrower or the persons deriving title under the  
 recited Settlement [*or Will*] to the Mortgagee[s] or the persons  
 deriving title under him [them] of the sum of £—, with  
 interest thereon from the date hereof at the rate of £— per  
 cent. per annum, the premises hereinbefore conveyed (:) shall  
 at the request and cost of the Borrower or the persons deriving  
 title to the premises under the recited Settlement [*or Will*] be duly  
 reconveyed [and surrendered] To THE USES, Upon the trusts, and  
 subject to the powers and provisions for the time being subsisting  
 under the said Settlement [*or Will*] with respect to the premises.

Proviso for  
 redemption  
 in mortgage  
 of freeholds  
 and copyholds  
 under S. L.  
 Acts.

IN consideration of the premises the Borrower with the privity No. 13.  
 of the Mortgagee[s] hereby appoints the said [*Receiver*] to be  
 receiver from time to time in the name of the Borrower or  
 otherwise, to receive the rents and profits of the premises  
 hereinbefore conveyed, AND the said [*Receiver*] shall, subject  
 to the provision hereinafter contained, have, exercise and per-  
 form all the like powers and duties, and be entitled to the like  
 remuneration, and be removable, and be deemed the agent of  
 the Borrower in like manner as well before as after the Mort-  
 gagee[s] shall have become entitled to exercise the power of  
 sale conferred by the Conveyancing and Law of Property Act,  
 1881, as if the said [*Receiver*] had been appointed by the  
 Mortgagee[s] pursuant to that Act (a) after he [they] had  
 become entitled to exercise the power of sale thereby conferred,

Appointment  
 of Receiver.

Powers of  
 Receiver.

Act, 1882, s. 8, and see Jud. Act, 1884, s. 14. The power being an authority coupled with an interest, even if not expressly made irrevocable would be irrevocable while any money remains on the security: *Gaussen v. Morton* (1830), 10 B. & C. 731; *Clerk v. Laurie* (1857), 2 H. & N. 200, *per Williams, J.*; *Bromley v. Holland* (1802), 7 Ves. at p. 28; *Carmichael's Case*, 1896, 2 Ch. 643; 65 L. J. Ch. 902; and *cf. Frith v. F.*, 1906, A. C. 254; 75 L. J. P. C. 50.

(z) Copyholds and leaseholds, though vested in trustees, can under S. L. Act, 1882, s. 20, be conveyed by the tenant for life. The conveyance of the copyholds operates like a surrender: *ib.* This form can be adapted to leaseholds which are sub-demised by the mortgage by adding the words "and demised" after "conveyed." The mortgage term will be surrendered when the debt is paid off. In some forms the term is made to cease on payment off, but it is desirable to have a surrender as evidence of the discharge.

Mortgages of  
 copyholds and  
 leaseholds  
 under S. L.  
 Acts.

(a) See s. 19 (1) (iii.), also s. 24.

[And any person paying money to the said [*Receiver*] shall not be concerned to inquire whether any case has happened to authorise him to act :

Not to act till interest in arrear, or power to act at once.

PROVIDED ALWAYS, that the said [*Receiver*] shall not exercise any of the powers of a receiver unless and until some half-yearly payment of interest due under these presents shall be wholly or partially in arrear for — days] [*or* PROVIDED ALWAYS, that the said [*Receiver*] shall immediately after the execution of these presents be entitled to exercise the powers of a receiver, and on his death or removal the Mortgagee[s] shall be deemed to have power to appoint a receiver within the meaning of the said Act (*b*)].

#### No. 14.

Power to appoint a Receiver extended to the appointment of a manager (*c*).  
Receiver to have statutory powers of leasing.

The provisions of the Conveyancing and Law of Property Act, 1881, as to the appointment of a receiver by mortgagees shall be and they are hereby extended so as to authorise any receiver appointed under the said provisions, if so directed in writing by the Mortgagee[s], or the persons deriving title under him [them], to manage and carry on the business for the time being carried on on the premises hereby conveyed [*or* demised] in such manner as he may think fit; and any money expended by such receiver or by the Mortgagee[s] or the persons deriving title under him [them] in carrying on the same, with interest thereon from the date of expenditure at the rate of £— per cent. per annum, shall be a charge upon the premises hereby conveyed [*or* demised]. [And every such receiver, if so directed as aforesaid, shall as the attorney for the Borrower have and may exercise all the powers which are conferred by section eighteen of the Conveyancing and Law of Property Act,

Receiver.

(*b*) After the death of the mortgagor, the receiver becomes the agent of his executor to the extent of the assets: *Re Hale*, 1899, 2 Ch. 107; 68 L. J. Ch. 517. The receiver's authority is necessary before the borrower can distrain for rent: *Woolston v. Ross*, 1900, 1 Ch. 788; 69 L. J. Ch. 363. As to receivers generally, see Wolst. Cony. Acts, 9th ed., 83; *Robinson Printing Co. v. Chic*, 1905, 2 Ch. 123; 74 L. J. Ch. 399.

Manager.

(*c*) See Conv. Act, 1881, s. 19 (1) (iii.), (2); *Rutter v. Everett*, 1895, 2 Ch. 872; 64 L. J. Ch. 845; *Re Hale*, cited last note. As to the appointment of a manager by the Court, see *Whitley v. Challis*, 1892, 1 Ch. 64; 61 L. J. Ch. 307; *Gloucester County Bk. v. Rudry, &c. Co.*, 1895, 1 Ch. 629; 64 L. J. Ch. 451. The goodwill of the business should of course be included in the mortgage.

1881, as varied or extended by these presents, and such receiver is hereby irrevocably appointed attorney accordingly].

PROVIDED ALWAYS, that upon any sale under the power conferred by the Conveyancing and Law of Property Act, 1881, and as well before as after conveyance, a Purchaser shall not be concerned to see or inquire whether a case has arisen to authorise the sale or whether due notice has been given, or whether the power is otherwise properly and regularly exercised :

No. 15.

Purchaser not concerned to inquire as to regularity of sale (*d*).

PROVIDED ALWAYS, that the Mortgagee[s] or the persons deriving title under him [them] may exercise all statutory powers in respect of the undivided share of hereditaments hereby conveyed either alone or in conjunction with the person or persons entitled to the other undivided share or shares, and may also at any time or times during the continuance of this security concur with such person or persons as aforesaid in making a partition of the said hereditaments or any of them, and may give or receive money for equality of partition, and any money so given, together with all expenses incurred by [him or] them in or about such partition, shall be added to the principal money hereby secured and carry interest at the same rate, and the net money so received (after payment of expenses) shall be applied towards payment of the principal money hereby secured.

No. 16.

Provision in mortgage of an undivided share.

(i) THE Mortgagee[s] and the persons deriving title under him [them] shall, so long as any money remains owing on the security hereof, have power as against the Borrower and the persons deriving title under him to enter into, acquire and retain possession or the receipt of the rents and profits of the hereditaments hereby conveyed [covenanted to be surrendered], and to give valid notices to tenants and occupiers, to pay rents to the Mortgagee[s] and the persons deriving title under him [them], and for the purposes aforesaid the Borrower hereby attorns tenant to the Mortgagee[s] of the said hereditaments at the

No. 16A.

Provision in a Second Mortgage of freeholds or copyholds as to obtaining possession (*e*).

(*d*) See *Life Interest, &c.* v. *Hand-in-Hand, &c.*, 1898, 2 Ch. 230 ; 67 L. J. Ch. 548.

(*e*) As to the need for this Form in second or subsequent mortgages, see L. Q. R., 1908, pp. 297—300 ; it is not required in a mortgage by demise or sub-demise of a term, see also R. S. C., O. 3, r. 6.

yearly rent of 10s., and so that the Mortgagee[s] may at any time after the — day of — next (*day for redemption*) enter into and upon the said hereditaments or any part thereof and determine the said tenancy without giving to the Borrower any notice to quit.

(ii.) For the consideration aforesaid the Borrower hereby irrevocably appoints the Mortgagee[s and each of them] and the persons deriving title under him [them] as his attorney or attorneys in his name or otherwise to take any proceedings, whether under section twenty-five, sub-section (5) of the Judicature Act, 1873, or otherwise in connexion with the preservation or recovery or taking possession of the said hereditaments, rents and profits.

(iii.) THE foregoing provisions shall have effect subject to all rights for the time being subsisting under the recited Mortgage of the — day of — (*First Mortgage*).

#### No. 17.

Attornment  
clause to be  
used where  
Borrower is in  
occupation.

THE Borrower hereby attorns tenant to the Mortgagee[s] of the hereditaments hereby conveyed [*or of such of the hereditaments hereby conveyed as are stated in the — Schedule hereto to be in the occupation of the Borrower*] at the yearly rent of 10s.

PROVIDED ALWAYS, that the Mortgagee[s] or the persons deriving title under him [them] may at any time after the — day of — next (*day fixed for redemption*), and provided that some or one of the events mentioned in section twenty of the Conveyancing and Law of Property Act, 1881, shall have occurred, enter into and upon the said hereditaments or any part thereof and determine the tenancy hereby created without giving to the Borrower any notice to quit:

PROVIDED ALSO that the Mortgagee[s] shall not under the provisions of this clause be deemed to be [a] mortgagee[s] in possession of the hereditaments hereby conveyed or accountable for the rents and profits thereof (*f*).

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(*f*) This attornment clause creates the relationship of landlord and tenant, and the mortgagees may under the right to enter on default obtain a summary judgment for the recovery of the land under O. 3, r. 6(i). As the mortgage is not registered as a bill of sale, the clause does not enable the mortgagees to distrain for rent: Bills of Sale Act, 1878, s. 6. The rent reserved should be nominal.

THE Borrower for himself and the persons deriving title under him hereby covenants with the Mortgagee[s] and with each of them] that so long as any money remains owing on the security of these presents no person or persons or corporation shall, without the consent in writing of the Mortgagee[s] or the persons deriving title under him [them], be registered as proprietor or proprietors under the Land Transfer Acts, 1875 and 1897, of the premises hereby conveyed [demised] or of any part thereof.

No. 18.

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Covenant that no person shall be registered as proprietor (*g*).

THE Borrower hereby covenants with the Mortgagee[s] and with each of them] that so long as any money remains due under these presents the Borrower or the persons deriving title under him will insure and keep insured all buildings upon the premises hereby conveyed [demised *or* covenanted to be surrendered] against loss or damage by fire, in at least the sum of £——[*or* a sum equal to three-fourth parts of the amount required to rebuild the same in case of total destruction (*i*)], and will pay every sum from time to time payable for keeping on foot every such insurance within seven days after the first day on which it becomes payable, and will forthwith deliver [*or* will from time to time

No. 19.

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Covenant to insure against fire (*h*).

(*g*) Having regard to the provisions of L. T. Act, 1897, s. 16 (2), as to the sale of registered land by a person who is not registered as proprietor of the land, or of a registered charge, it is conceived that every mortgage of unregistered land capable of registration under the Acts, whether in a compulsory district or not, should in strictness contain this covenant. Otherwise the mortgagees may find themselves hampered in exercising their power of sale by the registration of the owner of the equity of redemption as proprietor: L. T. R., 1908, rr. 151, 152, 263, however, afford assistance in this case: *cf. Re Voss* (1910), 55 Sol. J. 12. If the covenant in the text is broken, the statutory power of sale becomes immediately exercisable, see Conv. Act, 1881, s. 20 (iii.).

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As to covenant against registration.

(*h*) Under s. 23 (3) (4) of the Conv. Act, 1881, all money received on an insurance effected under the mortgage deed or the Act of 1881 is in the absence of provision to the contrary to be applied in restoration of the premises, or can, if the occasion has arisen, at the option of the mortgagee, be applied in or towards discharge of the mortgage debt. Under s. 88 (3) of the Stamp Act, 1891, the *ad valorem* stamp is not affected by this covenant.

Insurance.

(*i*) If there are several separate buildings the office requires separate policies. Where there is an existing insurance at the date of the mortgage, the policy, if in the custody of the borrower, should be handed over to the mortgagees with an indorsement by the office on it that they are interested jointly with the borrower.

Covenant to satisfy statutory right.

when required produce (*h*) to the Mortgagee[s] the policy or policies of insurance [or other proper evidence of the subsistence thereof], and also when required deliver to him [them] the receipt for [or other sufficient evidence of payment of] every sum payable as aforesaid, and in default that the Borrower will repay to the Mortgagee[s] or the persons deriving title under him [them] every sum which under the statutory power for the purpose may be expended by [him or] them in keeping the said buildings insured to the amount aforesaid, with interest thereon at the rate of £— per cent. per annum from the time of each payment (*l*). And the covenant as to insurance hereinbefore contained shall so long as the same is duly performed be in satisfaction of the statutory right of the Mortgagee[s] or the persons deriving title under him [them] to effect and keep on foot Fire Insurances (*m*).

No. 19A.  
The same  
(a short form).

THE BORROWER hereby covenants with the Mortgagee[s] that the Borrower or the persons deriving title under him will at all times during the continuance of this security keep the messuage and buildings hereby conveyed insured against loss or damage by fire in the sum of £—— at least [*or* in a sum equal to three-fourths of the value thereof] in the —— Insurance Office, or some other insurance office approved by the Mortgagee[s], and will pay all premiums payable in respect of such insurance within seven days after the same shall become due, and will on demand deliver [*or* produce] to the Mortgagee[s] or the persons deriving title under him [them] the policy of such insurance and the receipt for every such premium.

No. 20.  
Covenant by Borrower to keep up guarantee policy (*n*).

THE BORROWER hereby covenants with the Mortgagee[s] and with each of them] that so long as any money remains due under these

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(*h*) The policy and receipts may have to be delivered to a prior mortgagee or some one else.

(*l*) Conv. Act, 1881, s. 19 (1) (ii.), gives the mortgagee a charge for the amount paid, and interest at the same rate as the interest on the mortgage money.

(*m*) As to the construction of the covenant, see Conv. Act, 1881, s. 60.

(*n*) A guarantee policy is not a contract of indemnity, but a contract of suretyship: *Re Denton*, 1904, 2 Ch. 178; 73 L. J. Ch. 465. Apart from express powers, trustees cannot properly lend money where the security

Trustees lending on a guarantee policy.

presents the Borrower or the persons deriving title under him will pay every sum from time to time payable for keeping on foot the guarantee policy intended to be effected with the — Insurance Company within seven days after the first day on which it becomes payable and will, when required, deliver the receipt for every such payment to the Mortgagee[s], and that in default the Mortgagee[s] or the persons deriving title under him [them] may pay every such sum and also every sum payable for effecting and keeping on foot any other guarantee policy or policies either in the same or any other office in substitution for the said policy, and which other policies are in case of default as aforesaid hereby authorised to be effected at the discretion of the Mortgagee[s], And the Borrower will repay to the Mortgagee[s] or the persons deriving title under him [them] all sums so paid and all costs and expenses incurred in effecting any new policy or policies or otherwise in relation to the premises, with interest thereon at the rate of £— per cent. per annum from the time of each payment, And until repayment the premises hereinbefore conveyed [covenanted to be surrendered] [demised] and every new policy to be effected as aforesaid shall stand charged with the amount so to be repaid and the interest thereon.

THE Borrower hereby covenants with the Mortgagee[s and No. 21.  
with each of them] in manner following (that is to say):—

(i.) THAT (p) so long as any money remains due under these presents the Borrower will not, without giving notice in writing to the Mortgagee[s], go beyond the limits (q) permitted by the policy[ies] hereby assigned, or any new policy to be

Covenant to  
keep up life  
policy (o).

would be insufficient without the guarantee policy, though no doubt they may treat the policy as an additional covenant to pay.

(o) In the absence of express provision a mortgagee may charge the property with any money expended by him for keeping up the policy, with interest at £4 per cent.: *Bellamy v. Brickenden* (1861), 2 John. & H. 137; *Gill v. Downing* (1874), L. R. 17 Eq. 316.

Mortgagee  
entitled to  
keep up policy.

(p) The first sub-clause of the covenant may be omitted where the policy is an indisputable policy.

Variation  
where policy  
indisputable.

(q) Going beyond limits would not make a policy void if the proper additional premium be paid, but might throw an additional charge on the mortgagee.

As to the duty of a trustee in bankruptcy in respect of a mortgaged policy, see *Re Tyler*, 1907, 1 K. B. 865; 76 L. J. K. B. 541.

Duty of  
trustee in  
bankruptcy  
where mort-  
gaged policy.

effected as hereinafter provided, and will not do or permit anything whereby any such policy may become void or voidable, or whereby the Mortgagee[s] may be prevented from receiving or recovering any money thereby assured, And that the Borrower will immediately at his own cost, in case any such policy shall become voidable, do all things necessary for restoring the same, And in case any such policy shall become void, also do and furnish all acts, certificates and things necessary or proper to enable the Mortgagee[s] to effect a new policy on the life of the Borrower in the name[s] of the Mortgagee[s] (*r*) for the amount which would have become payable under the void policy if it had remained in force and the Borrower had died at the time when it became void, And that every such new policy, and the money payable thereunder, shall be subject to the like right of redemption and be held and applied in like manner as the policy[ies] hereby assigned and the money payable thereunder ;

(ii.) THAT the Borrower will during the continuance of this present security duly pay every sum from time to time payable for keeping on foot the said [every] policy[ies] [for the time being subject to this security (*s*)], and will make each such payment within seven days after the first day on which it becomes payable, and will forthwith deliver the receipt for [or other sufficient evidence of (*t*)] every such payment to the Mortgagee[s], And that in default the Mortgagee[s] or the persons deriving title under him [them] may pay every such sum, And the Borrower will repay to the Mortgagee[s] or the persons deriving title under him [them] all sums so paid [and all costs and expenses incurred in restoring any voidable policy or in effecting any new policy or otherwise in relation to the premises (*s*)], with interest for the same at the rate of £— per cent. per annum from the time of each payment, And until repayment the premises hereinbefore conveyed [demised] [and assigned] [and every new policy to be effected as aforesaid] shall

Construction,

(*r*) The addition of the survivors or survivor, or of any other person to whom the right to sue on this covenant devolves, is not necessary, see Conv. Act, 1881, s. 60.

(*s*) Omit if the policy is indisputable and the first sub-clause is not used.

(*t*) If the mortgage is not a first mortgage the receipts may have to be delivered to the first mortgagee.

stand charged with the amount so to be repaid and the interest thereon.

PROVIDED ALWAYS, that any policy for the time being subject to this security may under the statutory power of sale or otherwise be surrendered to the [Mortgagee[s] or any other (u)] company by whom it was granted at a price which shall not be less than the surrender value of the policy according to the tables for the time being in use by such company, or the Mortgagee[s] may at any time (whether the statutory power of sale is exercisable or not) surrender any such policy in exchange for a fully paid-up policy or make such other arrangements with such company as the Mortgagee[s] may think fit.

No. 22.

Power to surrender policies to company.

FOR the consideration aforesaid the Borrower hereby irrevocably nominates and appoints the Mortgagee[s and each of them] or his [their] substitute or substitutes to be the attorney and attorneys of the Borrower for him and in his name and on his behalf to recover and give receipts for any compensation payable under the Licensing (Consolidation) Act, 1910, as aforesaid [and as his act and deed to sign, seal and deliver, and otherwise perfect any deed of assignment of the term granted by the recited Lease which may be required in order to vest in a Purchaser or any other person the residue of the term granted by that Lease], and also to apply for and obtain from time to time renewals of the licences hereby assigned and to sign all proper notices and other documents and to do all necessary acts for assigning or transferring the said licences to the Mortgagee[s] or the persons deriving title under him [them], or as [he or] they may otherwise require, and for withdrawing the entry of the name of the Borrower from the books of the excise in respect of the premises.

No. 23.

Power of attorney in mortgage of a public-house to recover compensation, &c., and obtain renewals of licences, &c.

THE Borrower hereby covenants with the Mortgagee[s and with each of them] in manner following (that is to say):—

No. 23A.

(i.) THAT so long as any money remains due under these presents the Borrower or the persons deriving title under him

Covenants in mortgage of a public-house. Where there is a tied house (x).

(u) There would seem to be no objection to a surrender of a policy to the office under the statutory power of sale unless the mortgagees are the insurance company.

Surrender of policy under statutory power of sale.

(x) A mortgage of a public-house may contain a "tying" covenant during the continuance of the security: *Biggs v. Hoddlinott*, 1898, 2 Ch. 307;

will not use or sell or permit to be used or sold on the premises hereby conveyed [demised] any beer, stout or other malt liquor which shall not have been purchased direct from the Mortgagee[s] or his [their] agents;

(ii.) THAT so long as any money remains due under these presents the Borrower or the persons deriving title under him

Not to remove  
fixtures (*q*).

67 L. J. Ch. 510; but not after: *Noakes & Co. v. Rice*, 1902, A. C. 24; 71 L. J. Ch. 139. The covenant must be reasonable: *Morgan v. Jeffreys*, 1910, 1 Ch. 620; 79 L. J. Ch. 360. In a lease by brewers to a tenant who is tied, a covenant by the tenant to pay the whole additional duties imposed by Fin. (1909-10) Act, 1910, is ineffectual: s. 46.

Fixtures in  
mortgages.

(*q*) Notwithstanding the Bills of Sale Acts, trade machinery and other fixtures (even though belonging to a third party under a hire-purchase agreement of which the mortgagee has no notice: *Hobson v. Gorringe*, 1897, 1 Ch. 182; 66 L. J. Ch. 114; *Reynolds v. Ashby & Son*, 1904, A. C. 466; 73 L. J. Ch. 946) will be included in a mortgage as passing with the freehold or leasehold interest: *Southport, &c. Bkgy. Co. v. Thompson* (1887), 37 Ch. D. 64; 57 L. J. Ch. 114; *Re Yates* (1888), 38 Ch. D. 112; 57 L. J. Ch. 697; *Johns v. Ware*, 1899, 1 Ch. 359; 68 L. J. Ch. 155; and whether expressly mentioned by reference to a schedule or not: *Re Brooke*, 1894, 2 Ch. 600; 64 L. J. Ch. 21, unless, by implication, taken out of the assignment: *Small v. National Prov. Bk. of England*, 1894, 1 Ch. 686; 63 L. J. Ch. 270. This applies equally to equitable as well as legal mortgages: *Mene v. Jacobs* (1875), L. R. 7 H. L. 481; 44 L. J. Ch. 481; *Ex p. Lusty* (1889), 60 L. T. 160; but a prior equitable interest in fixtures will have priority to a subsequent equitable charge: *Re Samuel Allen & Sons, Ltd.*, 1907, 1 Ch. 575; 76 L. J. Ch. 362. Fixtures attached by the lessee after the date of the mortgage: *Muir v. Jacobs, sup.* (except trade fixtures brought on to the premises by a tenant of the mortgagor: *Sanders v. Davis* (1885), 15 Q. B. D. 218; 54 L. J. Q. B. 576), and fixtures replacing others, even though not physically annexed: *Monti v. Barnes*, 1901, 2 K. B. 205; 70 L. J. K. B. 225, will pass to the mortgagee. Fixtures cannot be sold apart from the land under a power of sale contained in the mortgage: *Ex p. Brown* (1879), 9 Ch. D. 390; 48 L. J. Bk. 10; nor under the power conferred by the Conv. Act, 1881; and if a provision is inserted in the mortgage to remove and sell the fixtures apart from the land the deed must be registered as a bill of sale: *Johns v. Ware, sup.* In the absence of express stipulation, a borrower can remove fixtures, though the right to do so ceases on the mortgagee taking possession: *Ellis v. Glover*, 1908, 1 K. B. 388; 77 L. J. K. B. 251, but this extends only to removal of fixtures effected by the borrower for the purposes of his trade: *Gough v. Wood*, 1894, 1 Q. B. 713; 63 L. J. Q. B. 564; he cannot remove fixtures for the express purpose of preventing the mortgagee claiming them: *Huddersfield Bkgy. Co. v. Lister*, 1895, 2 Ch. at p. 282; 64 L. J. Ch. 523. If the mortgage is bad as regards fixtures: *Re Yates, sup.*; *Climpson v. Coles*, 23 Q. B. D. 465; 58 L. J. Q. B. 346, it may nevertheless be valid in other respects: *Re London and*

will not sever from the land or remove from the premises hereby conveyed [demised] any trade or other fixtures now fixed or hereafter to be affixed to the premises except for the purpose of renewing or replacing the same by other fixtures of equal or greater value, And also will not do or permit any act whereby the licences (z) held in connexion with the premises or any of them may become void or voidable, or whereby the renewal thereof may be endangered, and will duly renew all the said licences as and when the same become renewable and pay all costs and expenses necessary to obtain such renewal, and will at all times conduct the business in a lawful, orderly, and proper manner;

Not to  
endanger  
licences.

(iii.) THAT so long as any money remains due under these presents the Borrower or the persons deriving title under him will pay all charges which may be imposed in respect of the said licences or any of them by virtue of the Licensing (Consolidation) Act, 1910, or any amendment thereof, and that in default the Mortgagee[s] or the persons deriving title under him [them] may pay all such costs, charges and expenses, and the Borrower will repay the same with interest thereon at the rate aforesaid from the time of each payment, And until repayment the premises hereinbefore conveyed [demised] and assigned (a) shall stand charged with the amount to be so repaid and the interest thereon;

To pay charges  
under Licens-  
ing Act, 1910.

(iv.) THAT so long as any money remains due under these presents the Borrower or the persons deriving title under him will insure and keep insured all buildings and trade fittings and fixtures in or upon the premises hereby respectively conveyed and demised against loss or damage by fire in every case in at least a sum equal to three-fourth parts of the amount required to rebuild the same in case of total destruction, and will keep the said fittings and fixtures in good repair and will pay every sum from time to time payable for keeping on foot every such insurance and for keeping on foot a proper Guarantee Policy against forfeiture of each of the several licences aforesaid

To insure  
trade fixtures  
as well as  
buildings.

To keep up  
guarantee  
policy (b).

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*Lancashire, &c. Co.* (1888), W. N. 36. See generally on this subject, Coote on Mortgages, 7th ed., Vol. I., pp. 127 *et seq.*, 216 *et seq.*

(z) See Fin. (1909-10) Act, 1910, Part II., and First Schedule for new scale of licences.

(a) This word should be added as the mortgage includes the goodwill of the business.

(b) See also, as to guarantee policies, Form No. 20, *sup.*

within seven days after the first day on which it becomes payable and will forthwith deliver to the Mortgagee[s] the policies of insurance and the Guarantee Policies and will also when required deliver to him [them] or the persons deriving title under him [them] the receipt for every sum payable as aforesaid, and in default that the Borrower or the persons deriving title under him will repay to the Mortgagee[s] or the persons deriving title under him [them] every sum which under the statutory power for the purpose may be expended by [him or] them in keeping the said buildings insured to the amount aforesaid, with interest thereon at the rate of £— per cent. per annum from the time of each payment, and also every sum which may be expended by [him or] them (and which in case of default [he or] they are hereby authorised to expend) in keeping up or restoring any such Guarantee Policy, with interest for the same at the rate aforesaid from the time of each payment, and until repayment the premises hereinbefore conveyed [demised] and assigned shall stand charged with the amount to be so repaid and the interest thereon, And the covenant as to insurance hereinbefore contained shall so long as the same is duly performed be in satisfaction of the statutory right of the Mortgagee[s] or the persons deriving title under [him or] them to effect and keep on foot Fire Insurances.

## No. 24.

Provision as to repayment of mortgage money by instalments of fixed amounts.

(i.) PROVIDED ALWAYS, that if the Borrower or the persons deriving title under him shall pay to the Mortgagee[s] or the persons deriving title under him [them] the said sum of £—, with interest thereon at the rate aforesaid [*or the reduced rate*], by the instalments, at the times, and in the manner hereinafter mentioned (that is to say), the said principal sum of £—, by — equal half-yearly payments of £— each on the — day of — and the — day of — in every year whereof the first is to be paid on the — day of — next, and the interest on the principal money for the time being unpaid by half-yearly payments on the — day of — and the — day of — in every year, whereof the first is to be made on the — day of — next, or (as to each such payment of principal and interest) shall make the same within thirty days next after the day so appointed for payment thereof respectively, interest being also paid on the principal money for so much (if any) of such thirty days as may have expired, And if there shall not have been any

breach of any obligation, statutory or otherwise, binding on the Borrower or of any of the covenants, whether express or implied, herein contained and on his part to be observed and performed (other than and besides the covenants for payment of the principal money and interest hereby secured), then the Mortgagee[s] or the persons deriving title under him [them] shall accept payment of the said sum of £—— and the interest thereon by instalments, at the times, and in the manner aforesaid, and will not require payment of such principal money otherwise than by such instalments;

(ii.) PROVIDED ALSO, that notwithstanding the provision for the payment of the principal money hereby secured by instalments, but without prejudice to the same provision, such principal money shall be deemed to become due within the meaning of the Conveyancing and Law of Property Act, 1881, and for all purposes of that Act, on the —— day of —— next.

Provision as to  
statutory  
power of  
sale (*bb*).

(i.) PROVIDED ALWAYS, that if the said principal sum of £—— hereby secured shall be paid by the instalments following (that is to say), the sum of £—— on the 31st day of December next, or within thirty days thereafter, and the sum of £—— on the 31st day of December in every subsequent year, or within thirty days thereafter, until the whole of the said principal sum shall be paid, and if every half-yearly payment of interest due under these presents shall be paid upon the day hereinbefore appointed for the payment thereof, or within thirty days thereafter [and if the covenant herein contained for keeping the premises insured against loss or damage by fire shall be duly observed and performed (*c*)], then and in such case the payment of the said principal sum, or any part thereof, shall not be required otherwise than by such instalments as aforesaid.

No. 25.

The same  
(another form).

(ii.) PROVIDED ALSO, that upon any sale under the statutory power a Purchaser, as well before as after conveyance, shall not be bound or concerned to see or inquire whether any default has been made in payment of the said principal sum or any

(*bb*) See *Walsh v. Derrick* (1903), 19 T. L. R. 209.

(*c*) If the mortgaged property is leasehold, substitute for the words in brackets:

and if the covenants of the Borrower herein contained and all statutory covenants and obligations binding on him in respect of the premises shall be duly observed and performed.

instalment thereof, or any interest thereon, contrary to the proviso last hereinbefore contained, or otherwise as to the necessity or propriety of the sale, or be affected by notice that no such default has been made as aforesaid or that the sale is otherwise unnecessary or improper.

## No. 26.

Power for  
Borrower to  
pay mortgage-  
money by  
instalments  
of unfixed  
amounts (*d*).

PROVIDED ALSO, that the Borrower or the persons deriving title under him may on any half-yearly day hereinbefore fixed for payment of interest, upon giving at least one calendar month's notice in writing to the Mortgagee[s] or the persons deriving title under [him or] them, pay off all or any part of the principal money for the time being owing on the security of these presents, but so that not less than the sum of £—— shall be paid off at any one time, and so that upon any payment of principal as aforesaid the interest on the whole principal money for the time being owing as aforesaid shall be paid: Provided (*c*) that any such partial payment shall not prejudice or affect the payment in due course of the instalments of principal money subsequently payable pursuant to the provision for that purpose hereinbefore contained.

## No. 27.

Power for the  
Borrower to  
pay off part of  
the principal  
money.

PROVIDED ALWAYS, that the Borrower or the persons deriving title under him may at any time or from time to time pay in or towards discharge of the principal money for the time being due on this security any sum not less than £—— and being a multiple of £100: Provided that notice in writing of the day of payment and of the amount intended to be paid be given to the Mortgagee[s] or the persons deriving title under him [them] not less than three calendar months before the day for payment mentioned in the notice, and on the expiration of such notice or within fourteen days thereafter payment shall be accepted: Provided that all interest due under these presents down to the last preceding half-yearly date for payment of interest shall have been paid and that any further interest on the principal money paid be also paid at the same time.

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(*d*) Unless Form No. 24 or No. 25 is also used, this power will be added as a proviso to the usual covenant to pay principal and interest.

(*c*) This proviso is not required unless either Form No. 24 or No. 25 is used as well.

PROVIDED ALWAYS, that if the Borrower or the persons deriving title under him shall at any time or from time to time sell any of the premises hereby conveyed at a price approved by the Mortgagee[s] or the persons deriving title under him [them] [or by a competent valuer], then the Mortgagee[s] or the persons aforesaid, after receipt by [him or] them of not less than three calendar months' previous notice in writing of the intention to make payment, and provided that all interest due under these presents down to the last preceding half-yearly date for payment of interest shall have been paid, and that any further interest on the principal sum paid be also paid at the same time, will, at the expiration of the notice or within fourteen days thereafter, accept payment towards discharge of the principal money hereby secured of the net money arising from any such sale after payment thereout of a sum not exceeding £— per cent. thereon for expenses, and will concur in the conveyance to the Purchaser, but so that the Mortgagee[s] or the persons aforesaid be not required to accept payment of more than £— in the whole nor of any one sum less than £— or not being a multiple of £100, and that in case the said three calendar months' notice shall not have expired or the purchase-money for the time being received shall not be sufficient to make up the sum of £— or a greater sum being a multiple of £100, such purchase-money, or the balance beyond the said sum of £— or any greater sum as aforesaid, shall, at the option and risk of the Borrower or the persons deriving title under him, be deposited at some Bank in London or invested in the purchase of £2 10s. per cent. Consolidated Stock in the joint names of the Borrower or the persons deriving title under him and of the Mortgagee[s] or the persons deriving title under [him or] them, and the interest or dividends on the deposit or the stock shall be accumulated by depositing or investing the same in like manner until the notice has expired or a sum of £— or a greater sum being a multiple of £100 can be thereby provided as the case may be, and thereupon the required sum shall be taken out of the deposit or raised by sale of stock, and shall be paid to and accepted by the Mortgagee[s] or the persons deriving title under [him or] them as hereinbefore provided, and the balance (if any) shall continue deposited or invested and the interest or dividends thereon shall continue to be accumulated as aforesaid until a further sum of £— can be thereby provided.

No. 28.

Mortgagees to concur in sales by Borrower and accept proceeds in part discharge.

## No. 29.

Mortgagee to accept new security under the approval of the Court (*f*).

PROVIDED ALWAYS, that the Mortgagee[s] or the persons deriving title under him [them] will at any time and from time to time at the request and cost of the Borrower or the persons deriving title under him release to him or them all or any of the hereditaments hereby conveyed upon a conveyance being made at the like cost to the Mortgagee[s] or the persons deriving title under him [them] of other hereditaments of a sufficient value to be approved by the Judge to whom the said action of — stands assigned, and the title to which hereditaments shall also be approved by the said Judge, such conveyance to be subject to the like right of redemption as may for the time being be subsisting under these presents.

## No. 30.

Provision for reduction of interest from half-year to half-year (*g*).

THE Mortgagee[s] hereby covenant[s] with the Borrower that if on any half-yearly day hereinbefore fixed for payment of interest, or within thirty days next after any such day, there shall be paid to the Mortgagee[s] interest on the principal money hereby secured at the reduced rate of £— per cent. per annum for the half-year ending on such half-yearly day [and there shall not have been any breach of any obligation, statutory or otherwise, binding on the Borrower or of any of the covenants, whether express or implied, herein contained and on his part to be observed or performed other than and besides the covenant for payment of the principal money and interest hereby secured (*h*)], then the Mortgagee[s] or the persons deriving title under him [them] will accept interest for such half-year at the reduced rate of £— per cent. per annum, but this provision shall not take effect (*i*) while the Mortgagee[s] or the persons deriving title under him [them] are in possession under these presents as mortgagees in possession, nor in any half-year while any interest previously accrued may remain unpaid, nor after judgment may have been obtained by the

(*f*) It is assumed in this Form that the mortgage is made under an order of the Court, but it can be adapted to other circumstances.

(*g*) The mortgagees will be bound without executing the mortgage.

(*h*) The covenant for payment is always broken. The words within brackets are inserted where the statutory power to lease is not excluded or the borrower has entered into any covenants besides the covenant to pay.

(*i*) A mortgagee in possession is entitled to the higher rate: *Bright v. Campbell* (1889), 41 Ch. D. 388; and see *Wrigley v. Gill*, 1906, 1 Ch. 165; 75 L. J. Ch. 210.

Mortgagee[s] or the persons deriving title under him [them] for payment of principal, interest and costs, nor after the expiration of any notice given by the Mortgagee[s] requiring payment of any principal money hereby secured.

PROVIDED ALWAYS, that if and whenever a half-year's interest for the said principal sum of £—, at the rate of £— per cent. per annum, shall be paid upon the half-yearly day hereinbefore fixed for payment of interest, or within thirty days thereafter, the same shall be accepted in satisfaction for the interest at the rate of £— per cent. per annum payable for that half-year under the foregoing covenant, but no claim for reduction shall be made under this clause in respect of any half-yearly payment of interest not made within the time aforesaid.

No. 31.

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The same (a short form).

THE Mortgagee[s] hereby covenant[s] with the Borrower that if continuously on each half-yearly day hereinbefore fixed for payment of interest, or within thirty days next after each such day, there shall be paid to the Mortgagee[s] interest on the principal money hereby secured at the reduced rate of £— per cent. per annum for the half-year ending on such half-yearly day, [and so long as there is not any breach of any obligation, statutory or otherwise, binding on the Borrower (*k*), or of any of the covenants, whether express or implied, herein contained and on his part to be observed or performed, other than and besides the covenant for payment of the principal money and interest hereby secured (*l*)], then the Mortgagee[s] or the persons deriving title under him [them] will accept interest for such principal money at the reduced rate of £— per cent. per annum (*m*).

No. 32.

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Provision for reduction of interest, payment being continuous.

(*k*) As, for instance, the obligation to deliver the counterpart of leases : Conv. Act, 1881, s. 18 (11).

(*l*) This covenant is always broken. The words in brackets will only be inserted where the statutory power of leasing is not excluded, or where there is a covenant as to Fire Insurance, or Life Policies, or rent of leaseholds, or the like.

(*m*) There may sometimes be a doubt whether an omission to pay interest for one half-year within thirty days puts an end to the right of reduction, see *Stanhope v. Manners* (1763), 2 Eden, 197 ; *Williams v. Morgan*, 1906, 1 Ch. 804 ; 75 L. J. Ch. 480. This Form does put an end to the right. The two preceding Forms put an end to the right for that half-year only.

No. 33.

Agreement for mortgage to continue for time certain (*n*).

(i.) THE Mortgagee[s] hereby covenant[s] with the Borrower that if on each half-yearly day hereinbefore fixed for payment of interest, and continuously during the period of — years from the date of these presents, or within thirty days next after each such day, there shall be paid to the Mortgagee[s] interest on the principal money hereby secured at the [reduced (*o*)] rate of £— per cent. per annum up to that half-yearly day [and there shall not be any breach of any obligation, statutory or otherwise, binding on the Borrower or of any of the covenants, whether express or implied, herein contained and on his part to be performed or observed, other than and besides the covenant for payment of the principal money and interest hereby secured (*p*)], then the Mortgagee[s] or the persons deriving title under him [them] will not before the expiration of the said period of — years require payment of the principal money hereby secured, or any part thereof (*q*);

(ii.) AND the Borrower hereby covenants with the Mortgagee[s] that the whole principal money hereby secured shall be allowed to remain on this security during the said period of — years (*r*);

(iii.) PROVIDED ALWAYS, that notwithstanding the restriction hereinbefore contained on the right to require payment of principal money, but without prejudice to the same, such principal money shall be deemed to become due within the meaning of the Conveyancing and Law of Property Act, 1881, and for all the purposes of that Act on the day on which such principal money is hereinbefore covenanted to be paid (*s*).

(*n*) Trustees should not, as a rule, agree to lend money for a term certain unless they are so authorised under the trust instrument: *Vickery v. Evans* (1861), 33 Beav. 376; 33 L. J. Ch. 261.

(*o*) In the case of interest reducible on punctual payment this should be the reduced rate.

(*p*) As to the words in brackets, see notes to last Form.

(*q*) As to waiver of the default in payment of interest, see, *Langridge v. Payne* (1862), 2 John. & H. 423; *Keene v. Biscoe* (1878), 8 Ch. D. 201; 47 L. J. Ch. 644. As to when time begins to run for the purpose of the Statutes of Limitation, see, *Reeves v. Butcher*, 1891, 2 Q. B. 509; 60 L. J. Q. B. 619.

(*r*) This covenant is valid: *Teeran v. Smith* (1882), 20 Ch. D. 724; 51 L. J. Ch. 621; *Biggs v. Hoddinott*, 1898, 2 Ch. 307; 67 L. J. Ch. 540; but the period must be reasonable: *Morgan v. Jeffreys*, 1910, 1 Ch. 620; 79 L. J. Ch. 360.

(*s*) This clause seems to be required to prevent any question as to the date when the statutory powers of sale, &c., arise.

PROVIDED ALWAYS, that payment of the principal money hereby secured shall not be required until the expiration of — years from the date hereof, if in the meantime every half-yearly payment of interest shall be made upon the day hereinbefore appointed for payment thereof, or within thirty days thereafter [and the covenant of the Borrower herein contained for keeping the premises insured against loss or damage by fire shall be duly observed and performed (t)]: BUT upon any sale made under the statutory power before the expiration of the aforesaid period, the Purchaser shall not be bound or concerned to see or inquire whether such sale is consistent with this provision, and if a sale is made in breach thereof the title of the Purchaser shall not be impeached on that account:

No. 34.

The same (a short form).

PROVIDED ALSO, that the Borrower or any person claiming under him shall not be at liberty to pay off the said principal sum of £——, or any part thereof, before the expiration of — years from the date hereof, unless the Mortgagee[s] or the persons deriving title under him [them] shall be willing to receive the same earlier, nor to pay the same on or after the expiration of the said period without giving the usual six calendar months' notice of intention so to do.

THE Borrower hereby covenants with the Mortgagee[s and with each of them] that if before the premises hereby assigned [conveyed] fall into possession any interest upon the principal money hereby secured or on any accumulations of interest arising under this present provision and added to principal money shall not be paid on any half-yearly day hereinbefore appointed for payment of interest, or within thirty days next after such half-yearly day, then from and after such default in payment and until the

No. 35.

Accumulation clause in mortgage of a reversion (u).

(t) If the mortgaged property is leasehold, substitute for the words in brackets:—

and the covenants of the Borrower herein contained and all statutory covenants and obligations binding on him in respect of the premises shall be duly observed and performed.

(u) Such a clause is valid, see, *Clarkson v. Henderson* (1880), 14 Ch. D. 348; 49 L. J. Ch. 289; *Salt v. Marquess of Northampton*, 1892, A. C. 1; 61 L. J. Ch. 49. See also an article in 45 Sol. J. 404.

. When the Form is used see that the stamp will be sufficient to cover Stamp interest converted into principal.

premises fall into possession, but without prejudice to the right of the Mortgagee[s] to require payment, or to the right of the Borrower after due notice to make payment at any time of the principal money, interest and accumulations of interest hereby secured, the sum due in respect of the half-year's interest so unpaid shall become principal money as from the half-yearly day on which it became due and be added to the principal money hereby secured, and shall carry interest at the rate of £— per cent. per annum from the half-yearly day on which such half-year's interest became due, and the interest upon all sums so converted into principal money shall be payable on the half-yearly days aforesaid, so that all interest unpaid on the original principal sum hereby secured and on all sums converted into principal money under this present provision shall become accumulated in the way of compound interest with half-yearly rests, and the Borrower will when the premises fall into possession pay to the Mortgagee[s] (c) the said accumulated fund as well as the original principal sum hereby secured, with interest thereon respectively at the rate aforesaid until payment, and such fund and sum and the interest thereon shall constitute a charge on the premises hereby assigned [conveyed], and those premises shall not be redeemed except on payment of all principal money hereby secured, and all interest and accumulations made as aforesaid of interest on such principal money and accumulations :

Recovery  
of interest.

(c) Under a mortgage of a reversionary interest in personalty (even though invested on mortgage of real estate) more than six years' arrears of interest can be recovered : *Smith v. Hill* (1878), 9 Ch. D. 143 ; 47 L. J. Ch. 788 ; *Clarkson v. Henderson* (1880), 14 Ch. D. 348 ; 49 L. J. Ch. 289 (where there was an accumulation clause, and *cf. Salt v. Marquess of Northampton*, 1892, A. C. 1 ; 61 L. J. Ch. 49) ; *Mellersh v. Brown* (1890), 45 Ch. D. 225 ; 60 L. J. Ch. 43. In the absence of an accumulation clause not more than six years' arrears can be recovered in the case of a reversionary interest in realty, or proceeds of sale thereof : *Bouryer v. Woolman* (1867), L. R. 3 Eq. 313 ; or money charged on land, see, *Smith v. Hill*, *sup.* ; but the mortgagee is not limited to six years' arrears, either on exercising his power of sale : *Edmunds v. Waugh* (1866), L. R. 1 Eq. 418 ; *Re Marshfield* (1887), 34 Ch. D. 721 ; 56 L. J. Ch. 599 ; or in an action to redeem : *Dingle v. Coppen*, 1899, 1 Ch. 726 ; 68 L. J. Ch. 337 ; and see *Re Lloyd*, 1903, 1 Ch. 385 ; 72 L. J. Ch. 78 ; *Re Hazeldine*, 1908, 1 Ch. 34 ; 77 L. J. Ch. 97.

The above clause purports to charge the accumulated fund on the property when it falls into possession and thus prevent any question arising as to recovery of arrears of interest in the case of realty.

PROVIDED ALWAYS, that the Borrower may at any time after three calendar months' previous notice in writing given for the purpose to the Mortgagee[s] pay to him [them] all interest and accumulations of interest for the time being due to him [them].

THE Borrower hereby covenants with the Mortgagee[s and with each of them] that he will on demand pay to the Mortgagee[s] all costs, charges and expenses to be incurred, or which the Mortgagee[s] may be ordered to pay in or about or consequent on obtaining, giving, removing or withdrawing any stop order or any other order or any notice required to complete the validity of this security upon the money or investments for the time being comprised therein, or in making application or appearing or attending in any action or proceeding affecting such money or investments for the purpose of receiving or recovering or attempting to receive or recover the same or any part thereof or any income thereof, or otherwise protecting or enforcing the security intended to be hereby made, together with interest on the amount of all such costs, charges or expenses at the rate of £— per cent. per annum computed from the date at which the same were respectively paid by the Mortgagee[s], and until payment such amount and the interest thereon shall be a charge on the premises hereby conveyed [demised] [and assigned].

No. 36.

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Covenant to pay costs of obtaining stop order, &c. (yy).

PROVIDED ALWAYS that without prejudice to the rights and remedies of the Mortgagee[s] and the enforcement thereof in such order and manner as may be thought proper, the premises hereby conveyed shall be and remain charged with and primarily liable in exoneration of the Borrower and his real and personal representatives to the payment of the principal money and interest hereby secured (yy).

No. 37.

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Liability as between Borrower and the mortgaged property.

PROVIDED ALWAYS, that without prejudice to any rights of the said [Surety] against the Borrower as principal debtor, the said

No. 38.

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Surety to be liable as a principal debtor (z).

(y) See R. S. C., 1883, O. 46, rr. 2 *et seq.*, 12 *et seq.*

(yy) This Form is generally used when a tenant for life joins to covenant to pay principal and interest, he does not, as regards the mortgagee, thereby become a surety: *Nicholas v. Ridley*, 1904, 1 Ch. 192; 73 L. J. Ch. 145.

(z) In cases where the personal covenants of the borrower cannot safely be relied upon, *e.g.*, in mortgages of reversionary interests, it is desirable to join a third party for the purpose of guaranteeing the principal and interest, or the interest alone, and the performance of the borrower's covenants. Care should be taken that the surety is independently advised

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Reasons for joining surety.

[*Surety*] shall under the covenant by him hereinbefore contained be deemed a principal debtor and not merely a surety, and

and is a suitable person, as in some cases, *e.g.*, where the borrower is the surety's father, the Court will presume that the surety is acting under the undue influence of the borrower: Withers on Reversions, 163 *et seq.*

Surety discharged from liability by new arrangement with debtor, *e.g.*, by giving him further time,

Where a person joins as surety it is necessary that he should be made acquainted with all the circumstances and facts which bear upon or can affect his position, for, if he is kept in ignorance of anything which might have influenced him in undertaking the obligation, the creditor will have no remedy against him; and in order to preserve his obligation care must be taken in all subsequent transactions between the principal debtor and the creditor that no arrangement is made between them either as to the payment of the debt or the securities which can prejudicially affect the surety's position. Thus, if further time is given by the creditor to the principal debtor for the payment of the debt (*Nisbet v. Smith* (1785), 2 Bro. C. C. 579) without the surety's consent, and without reserving a right to proceed against the surety (*Orrwood Gurney & Co. v. Oriental Fin. Corpn.* (1874), L. R. 7 H. L. 348; 41 L. J. Ch. 332; *Bolton v. Buckenham*, 1891, 1 Q. B. 278; 60 L. J. Q. B. 261; *Bolton v. Salmon*, 1891, 2 Ch. 48; 60 L. J. Ch. 239; and see *Rouse v. Bradford Bkgy. Co.*, 1894, 2 Ch. 32; 1894, A. C. 586; 63 L. J. Ch. 337, 890; and *Greenwood v. Francis*, 1899, 1 Q. B. 312; 68 L. J. Q. B. 228), or if the creditor, without the consent of the surety, compounds with the principal debtor or releases him from payment of the debt (*Webb v. Hewitt* (1857), 3 K. & J. 438; *Nicholson v. Revill* (1836), 4 Ad. & El. 675; 5 L. J. K. B. 129), the surety will be discharged (see *Rees v. Berrington* and the notes thereon in Wh. and Tud. L. C. in Equity, 7th ed., Vol. II., pp. 568 *et seq.*), though a binding agreement made by a creditor with a stranger (or a co-surety: *Clarke v. Birley* (1889), 41 Ch. D. 422; 58 L. J. Ch. 616) to give time to the principal debtor will not operate as a discharge: *Fraser v. Jordan* (1857), 8 El. & Bl. 303; 26 L. J. Q. B. 288. But it seems that a covenant not to sue the principal debtor, subject to a proviso that the creditor should not be prevented from suing any other person than the principal debtor who might be liable to pay the money, does not discharge the surety: *Price v. Barker* (1855), 4 El. & Bl. 760; 24 L. J. Q. B. 130; *Green v. Wynn* (1869), L. R. 4 Ch. 204; 38 L. J. Ch. 220; *Bateson v. Gosling* (1871), L. R. 7 C. P. 9; 41 L. J. C. P. 53; *Commercial Bk., &c. v. Jones*, 1893, A. C. 313; 62 L. J. P. C. 104. The surety will not, however, be released from his obligations if his remedies are not affected by the arrangement between the creditor and the principal debtor (*Hulme v. Coles* (1827), 2 Sim. 12; *Price v. Edmunds* (1830), 10 B. & C. 578; 8 L. J. (O. S.) K. B. 119), or if further time is given with the consent of the surety, or if the right of the principal debtor to proceed against the surety is clearly reserved (*Boulthée v. Stubbs* (1810), 18 Ves. 20; *Webb v. Hewitt*, *sup.*), or if the surety has expressly bound himself by the deed creating the suretyship to continue liable (*Perry v. Nat. Prov. Bk. of England*, 1910, 1 Ch. 464), or by the creditor not taking proceedings against the principal debtor for the payment of the debt, or by his taking an additional security or afterwards

unless all surety's remedies against debtor are unaffected.

accordingly shall not be discharged, nor shall his liability be affected by any giving of time for payment of principal money

releasing such further security (*Newton v. Chorlton* (1853), 10 Hare, 646); but the surety would be released if the creditor were to take from the debtor a security in substitution for all or any of the original securities: *Mayhew v. Boyes* (1910), 103 L. T. 1; Wh. & Tud. L. C. in Equity, 7th ed., Vol. II., p. 598.

If there are two sureties, and the creditor releases one, such release operates as a release of the other: *Nicholson v. Rerill*, *sup.*; *Evans v. Bremridge* (1855), 2 K. & J. 183; 8 De G. M. & G. 100; 25 L. J. Ch. 334; and this applies equally whether the obligation arises upon a judgment or upon any other security: *Re E. W. A.*, 1901, 2 K. B. 642; 70 L. J. K. B. 810. So, if the mortgage deed is drawn in such a manner that several sureties shall enter into joint and several covenants, the execution of all is necessary in order to affect all or any of them: *Evans v. Bremridge*, *sup.*; *Fitzgerald v. McCowan*, 1898, 2 Ir. R. 1; *Nat. Prov. Bk. of England v. Brackenbury* (1906), 22 T. L. R. 797. If a surety pays the debt of the principal debtor, he is entitled to stand in the place of the creditor as to all his remedies and the benefit of all his securities (whether they be land, specialty, or otherwise) for the payment of his debt: *Newton v. Chorlton*, *sup.*; *Forbes v. Jackson* (1882), 19 Ch. D. 615; 51 L. J. Ch. 690; Mercantile Law Amendment Act, 1856, s. 5; and this applies even if such surety has not obtained actual assignment of the judgment: *Re M. Myu* (1886), 33 Ch. D. 575; 55 L. J. Ch. 845. Under a joint and several suretyship the death of one of the sureties does not by itself determine the liability of the surviving co-surety: *Beckett v. Addyman* (1882), 9 Q. B. D. 783; 51 L. J. Q. B. 597, see, also *Re Ennis*, 1893, 3 Ch. 238; 62 L. J. Ch. 991, and *Re Grace*, 1902, 1 Ch. 733; 71 L. J. Ch. 358.

Release of one surety is a release of others.

Surety paying debt entitled to stand in place of creditor.

Where a surety or one of several co-sureties is liable for an actual accrued debt and admits liability, he can compel the principal debtor to relieve him from his liability by paying off the debt: *Ascherson v. Tredegar Dry Dock, &c. Co.*, 1909, 2 Ch. 401; 78 L. J. Ch. 697.

Accrued debt.

Where one of several co-sureties discharges the liability or part of the liability of the others, he can call upon the others for contribution: *Dering v. Winchelsea* (1787), 2 B. & P. 270; *Cowell v. Edwards* (1800), 2 B. & P. 268, and see *Re Denton*, 1904, 2 Ch. 178; 73 L. J. Ch. 465; but a surety is not entitled to call upon his co-surety for contribution unless he has paid more than his proportion of the debt due, see, *Ex p. Snordon* (1881), 17 Ch. D. 44; 50 L. J. Ch. 540; *Wolmershausen v. Gullick*, 1893, 2 Ch. 511; 62 L. J. Ch. 773.

Contribution as between co-sureties.

If one of several co-sureties obtains a counter-security from the principal debtor, he is bound to bring all money received under it into hotchpot for the benefit of the other co-sureties; and when a co-surety has handed over to the others their share of the money received, he will be again entitled to recover out of the counter-security the amount so handed over, whereupon their right to participate again arises, and so *toties quoties*, so that in effect the counter-security enures for the benefit of all the sureties to the full

Rights of co-sureties where one obtains a counter-security.

or interest, or by any agreement not to call in principal money before a specified time, or by substitution of any new covenant to pay, or by consolidation of mortgages, or by any transfer of mortgage or any security given for a further advance, or by any mortgage or sale of or other dealing with the equity of redemption, or by any other arrangement or dealing between the Borrower and the Mortgagee[s] or the persons deriving title under him [them] in reference to this security, or the property comprised therein, or by any omission on the part of the Mortgagee[s] or the persons deriving title under him [them] to enforce any covenant or stipulation therein contained, and on the part of the Borrower to be performed or observed or by any other act or thing or omission or means whereby the liability of the said [*Surety*] would not have been discharged if he had been a principal debtor.

## No. 39.

Mortgage given by a surety to be a principal mortgage (*a*).

PROVIDED ALWAYS, that as between the Mortgagee[s] on the one hand and the Borrower and the said [*Surety*] on the other hand, the recited Indenture of Mortgage and these presents shall be deemed as forming together one security, and these presents shall be deemed a principal and not a collateral security, and the said [*Surety*] shall be deemed a principal debtor and not merely a surety, and accordingly neither he nor this security shall be discharged or affected by any giving of time for payment of principal money or interest (*continue as in the last Form with the necessary alterations*).

## No. 40.

Power of consolidation reserved, and power of sale to be exercisable without notice.

SECTION[s] seventeen [and twenty (*b*)] of the Conveyancing and Law of Property Act, 1881, shall not apply to these presents or the security hereby made.

extent of the principal debt: *Berridge v. B.* (1890), 44 Ch. D. 168; 59 L. J. Ch. 533; but the principal creditor is not entitled to the benefit of counter-securities given by the principal debtor to the surety: *Re Walker*, 1892, 1 Ch. 621; 61 L. J. Ch. 234.

Under the R. S. C., 1883, O. 16, r. 6, a plaintiff may, at his option, join as parties to the action all or any of the persons severally, or jointly and severally, liable on any one contract (see Annual Practice, n. on O. 16, r. 6), and under r. 48 the surety, being sued, can call on the principal debtor to indemnify him: *Ex p. Young* (1881), 17 Ch. D. 668; 50 L. J. Ch. 824. See further as to the law of sureties, Wh. and Tud., L. C. in Equity, 7th ed., 535 to 605, and De Colyar's Law of Guarantees.

(*a*) See note to last Form.

(*b*) Conv. Act, 1881, s. 20, should not as a rule be excluded in a mortgage

THE Borrower or any person deriving title under him shall not, except with the consent in writing of the Mortgagee[s] or the persons for the time being deriving title under him [them], exercise the powers of leasing or of agreeing to lease conferred by the Conveyancing and Law of Property Act, 1881, on a mortgagor while in possession (*d*), but it shall not be necessary to express such consent in any such Lease or Agreement, nor shall any lessee be concerned to see that any such consent has been given.

No. 41.

Borrower not to grant Leases without consent (*c*).

No Building Lease or agreement therefor by the Borrower or any person deriving title under him shall have effect by virtue of section eighteen of the Conveyancing and Law of Property

No. 42.

Borrower not to grant Building Leases or Leases for a longer term than fourteen years.

from a client to his solicitor prepared by the latter: *Cockburn v. Edwards* (1881), 18 Ch. D. 449; 51 L. J. Ch. 46; *Cradock v. Rogers* (1885), W. N. 134; 53 L. J. Ch. 968; *Pooly's Trustee v. Whitham* (1886), 33 Ch. D. 111; 56 L. J. Ch. 41.

(c) S. 18 (13), (14) of the Conv. Act, 1881, authorises variations and modifications of the statutory provisions of leasing to be made in the mortgage. As a general rule, it is a mistake wholly to exclude the operation of these ss., see Wolst. Conv. Acts, 9th ed., 72. The leases authorised are, generally, for the benefit of both parties, and if s. 18 is not excluded the mortgagee becomes, under s. 10, the reversioner, and can sue on the covenants and otherwise: *Municipal, &c. Building Socy. v. Smith* (1888), 22 Q. B. D. 70; 58 L. J. Q. B. 61, and see *Wilson v. Queen's Club*, 1891, 3 Ch. 522; 60 L. J. Ch. 698. Though a lease cannot be surrendered to a mortgagor so as to merge (see *Robbins v. Whyte*, 1906, 1 K. B. 125; 75 L. J. K. B. 38), the mortgagor can sue on the covenants so long as he remains in possession: *Turner v. Walsh*, 1909, 2 K. B. 484; 78 L. J. K. B. 753. If s. 18 is excluded, and leases are nevertheless granted by the mortgagor, then the mortgagee is a stranger to the lessee, and cannot sue: Woodfall, L. & T., 18th ed., p. 62. The mortgagee can eject without notice: *Keck v. Hall* (1778), 1 Doug. 21; 1 Smith's L. C., 11th ed., 511; but in the case of an agricultural holding, only after giving six months' notice, and subject to the tenant's claim for compensation for improvements, see the Agr. Hold. Act, 1908, s. 12. If rent is accepted the lessee becomes a yearly tenant not liable to re-entry for non-payment of rent, and free from all covenants, and can only be ejected after proper notice to quit: Woodfall, L. & T., 18th ed., 65, 66. The fact that a tenant remains in possession after notice to pay rent to the mortgagees does not make him the tenant of the mortgagees: *Towerson v. Jackson*, 1891, 2 Q. B. 484; 61 L. J. Q. B. 36.

Effect of excluding statutory powers.

(*d*) The mortgagee cannot alone exercise the powers until he goes into possession: *Noyes v. Pollock* (1886), 32 Ch. D. 53; 55 L. J. Ch. 513, and see *Chapman v. Smith*, 1907, 2 Ch. 97; 76 L. J. Ch. 391.

Act, 1881, unless the Mortgagee[s] or the persons deriving title under him [them] shall consent thereto in writing, but it shall not be necessary to express such consent in any such Lease or Agreement therefor (*e*), nor shall any lessee be concerned to see that any such consent has been given [and no Lease by the Borrower (other than a Building Lease as aforesaid) shall have effect under that section for a term exceeding fourteen years (*ee*)].

## No. 43.

Statutory powers of Mortgagor and Mortgagee to grant Leases extended (*f*).

Building Leases for 999 years.

Streets, gardens, squares, &c., authorised.

Mining leases.

THE powers of leasing conferred on a Mortgagor and Mortgagee by the Conveyancing and Law of Property Act, 1881, shall be varied and extended in the following particulars:—

- (i.) A Building Lease or Building Leases may be granted for any term not exceeding nine hundred and ninety-nine years.
- (ii.) Every Building Lease may authorise any part of the premises to be laid out for streets, roads, paths, squares, gardens and other open spaces, sewers, drains and water-courses, either to be dedicated to the public or not, with fences, pavings, connexions and other works incidental thereto respectively.
- (iii.) A Lease or Leases may be granted for mining purposes in the same manner in all respects as Mining Leases may under the Settled Land Acts, 1882 to 1890, be granted by a tenant for life in possession of land.

## No. 44.

Declaration that s. 18 of Conveyancing Act shall be extended so as to authorise Mining Leases (*g*).

THE power of leasing conferred by section eighteen of the Conveyancing and Law of Property Act, 1881, shall be extended so that the person or persons in whom that power shall for the time being be vested may grant (in addition to the Leases thereby authorised) a Mining Lease or Mining Leases of any part of the mortgaged hereditaments for any term not exceeding

(*e*) See Conv. Act, 1881, s. 18 (3) (ii.). In a building lease granted under the statutory provisions a nominal rent may be reserved for the first five years: sub-s. 10.

(*ee*) In some cases it may be desirable to prevent the borrower granting longer leases, under his statutory power, than for fourteen years so as to avoid raising claims for increment value and reversion duties.

(*f*) See Conv. Act, 1881, s. 18 (14).

(*g*) The Conv. Act, 1881, does not authorise a mortgagor to grant mining leases. This Form incorporates the provisions of s. 18 (4)—(8), (11), (12).

sixty years, and for this purpose the term "Mining Lease" shall have the same meaning as is assigned thereto by section two (10) of the Settled Land Act, 1882, and any rent may be reserved on a Mining Lease under the power hereby conferred, which by virtue of section nine of the Settled Land Act, 1882, might be reserved on any Mining Lease under that Act :

AND with a view to enable the person or persons aforesaid to grant Leases under the statutory power as hereby extended he or they may accept the surrender of any lease now existing, or which hereafter may be granted, of any property proposed to be comprised in the new Lease :

Power to accept surrender of existing Leases.

PROVIDED ALWAYS, that no Lease shall be granted by the Borrower under the statutory power as hereby extended unless the same shall have been first approved by the solicitors for the time being of the Mortgagee[s] at the expense of the Borrower, and such approval shall be deemed to be sufficiently testified by a memorandum thereof indorsed on the Lease or written at the foot of the draft or any copy of the Lease, and signed by a person or firm professing to be the solicitor or solicitors of the Mortgagee[s].

All Leases under statutory power as extended to be approved by Mortgagee's solicitor.

THE Borrower or other the person or persons for the time being having under the recited Settlement [*or Will*] the powers of a tenant for life in possession under the Settled Land Acts, 1882 to 1890, may with respect to the premises hereby conveyed [*or demised*], and while in possession, exercise all the powers of leasing (including the power of granting Mining Leases) and agreeing to lease conferred by the said Acts or by the said Settlement [*or Will*], and the powers of leasing conferred on a mortgagor by the Conveyancing and Law of Property Act, 1881, shall be varied and extended accordingly, and the Borrower or other the person or persons for the time being entitled to exercise the powers of leasing hereby conferred shall furnish to the Mortgagee[s] or the persons

No. 45.

Power for tenant for life of mortgaged property to exercise Settled Land Act powers of leasing (*h*).

(*h*) This Form is intended for insertion in a mortgage of the settled land, see S. L. Act, 1882, ss. 5, 18, 47; S. L. Act, 1890, s. 11. Where a life estate only is mortgaged, the tenant for life can, unless the mortgagee is actually in possession, still exercise his powers of leasing under the S. L. Acts, provided the leases are made at the best rent that can be obtained without fine, see S. L. Act, 1882, s. 50 (3).

deriving title under him [them] yearly on the — day of — in every year a statement in writing giving the short particulars of all Leases granted and agreements for Leases entered into during the preceding year, and the delivery of such yearly statement shall be deemed to be a sufficient compliance with the provisions of the last-mentioned Act with reference to the delivery of counterparts (*i*).

## No. 46.

Restriction on  
leasing powers  
of tenants for  
life.

So long as any money remains due on this security the Borrower or the persons deriving title under the recited Settlement [*or Will*] shall not, without the consent in writing of the Mortgagee[s] (*k*) or the persons deriving title under him [them] lease or agree to lease the premises hereby conveyed or any part thereof for any term or terms exceeding twenty-one years, nor otherwise than at the best rent to be reasonably obtained without taking a fine, but it shall not be necessary to express such consent in any such Lease or Agreement, nor shall any lessee be concerned to see that any such consent has been given.

## No. 47.

Provision in a  
transfer of a  
mortgage  
where the  
Transferor  
conveys to  
himself and  
another or  
others.

PROVIDED ALWAYS, that the statutory covenants intended to be implied in these presents by reason of the said [*Transferor*] being expressed to assign and convey as Mortgagee shall operate and have effect as if the assignment and conveyance by the said [*Transferor*] hereinbefore respectively contained had been made to the said [*other Transferee[s]*] alone (*l*).

## No. 48.

Power to  
accept sur-  
renders of  
Leases (*m*).

For the purposes of these presents section eighteen of the Conveyancing and Law of Property Act, 1881, shall be deemed to authorise the Borrower or the persons deriving title under him while in possession, and the Mortgagee[s] and the persons deriving title under him [them] while in possession, to accept (with a view to the grant of a new Lease or Tenancy) the surrender of any Lease or Tenancy Agreement: Provided that

(*i*) See Conv. Act, 1881, s. 18 (11).

(*k*) See S. L. Act, 1882, s. 50 (3).

(*l*) A person cannot contract with himself: *Ellis v. Kerr*, 1910, 1 Ch. 529; 79 L. J. Ch. 291; and accordingly cannot sue himself. The object of this provision is to enable the other transferees to sue: Wolst. Conv. Acts, 9th ed., 34, 41—42.

(*m*) See *Robbins v. Whyte*, 1906, 1 K. B. 125; 75 L. J. K. B. 38.

the Borrower or the persons deriving title under him shall not be entitled to accept any premium or consideration in money or money's worth for any such surrender.

(i.) THE Borrower hereby covenants with the Mortgagee[s] and with each of them] that so long as any money remains owing under these presents the Borrower or the persons deriving title under him will discharge all Duties on Land Values which may be payable under the Finance (1909-10) Act, 1910, or the rules thereunder, or under any statutory modification or amendment thereof in respect of the premises hereby conveyed [demised], and whether the Mortgagee[s] or the persons deriving title under him [them] shall be in possession thereof or not, and will save harmless and keep indemnified the Mortgagee[s] and the persons deriving title under him [them] and their respective estates and effects from and against all proceedings, costs, claims and expenses on account of any omission to pay the said duties or any of them.

(ii.) THE provisions of sub-section four of section thirty-nine of the Finance (1909-10) Act, 1910, shall extend to Undeveloped Land Duty and Mineral Rights Duty as well as to Increment Value Duty and Reversion Duty.]

IN these presents, where the context so admits, the expressions "Borrower" and "Mortgagee[s]" include the persons respectively deriving title under them (o).

No. 49.

Covenant by Borrower to pay Duties on Land Values (u).

[Power for Mortgagees to add Undeveloped Land and Mineral Rights Duties to their security.]

No. 50.

Definition clause.

(u) See Napier, p. 186, as to the position of mortgagees with regard to the duties on land values. Generally, they are not liable for increment value or reversion duty unless in possession. Possibly they may be liable for undeveloped land and mineral rights duty whether in possession or not. S. 39 (4) enables mortgagees to add money paid or payable in respect of the first two duties to their security, but this does not apply to undeveloped land and mineral rights duties. In any case, it is conceived that the above Form should be inserted so as to give the mortgagees the right to sue on the personal covenant. There can be no object in stating that a mortgagee can pay the duties out of money arising under his power of sale. The latter part of the form should be struck out when not required.

(o) Where this Form is used the words "the persons deriving title under him [them]" may be struck out of the Forms.

# PART II. PRECEDENTS OF MORTGAGES.

## SECTION I.

### MORTGAGES ARRANGED ACCORDING TO THE CHARACTER OF THE MORTGAGORS (*a*).

#### GROUP A.—MORTGAGES BY ABSOLUTE OWNERS.

*(Freeholds, Copyholds, and Leaseholds, whether subject or not to Incumbrances.)*

#### No. 1.

MORTGAGE of FREEHOLDS, VARIATIONS *where there are provisions extending the STATUTORY POWERS of LEASING to MINING and other LEASES.*

Parties.

THIS INDENTURE (*a*), made the — day of — 19—, BETWEEN A. B., of, &c. (hereinafter called the Borrower) of the one part, and C. D., of, &c. [E. F., of, &c., and G. H., of, &c.] (hereinafter called the Mortgagee[s]) of the other part :

Recital of  
Mortgagor's  
seisin (*b*).

WHEREAS the Borrower is seised (*Form No. 1, sup.*):  
AND WHEREAS (*Form No. 2A, sup.*):

Agreement for  
advance.

NOW THIS INDENTURE WITNESSETH as follows:—

Preliminary  
clause.  
Covenant for  
payment of  
principal.  
[Further  
advances]  
and interest.

1. In pursuance, &c. (*continue as in Preliminary Clause, Form No. 3, sup.*), the Borrower hereby covenants with the Mortgagee[s] (*continue as in Form No. 4*).

[AND ALSO, &c. (*continue as in Form No. 5, if required*).]

AND ALSO, &c. (*continue as in Form No. 6; add, if required, provision as to repayment by instalments, Form No. 24 or No. 26 or No. 27*).

Forms.

(*a*) The Forms referred to in the following Precedents are those in Div. III., Part I., Mortgages (Forms), *sup.*, unless otherwise stated. To avoid the omission of a material clause from a mortgage it is desirable to glance through the List of Forms, *sup.*

Duties on  
land values.

Form No. 49 as to duties on land values is not expressly referred to in each Precedent, but will be required in most cases.

(*b*) Where extreme brevity is desired the recitals with the words "Now This Indenture" may be omitted, and the operative part will (after the words "Witnesseth as follows:—") commence with "In consideration of, &c."

2. FOR the consideration aforesaid, &c. (*continue as in Form No. 8*). Conveyance of freeholds by way of mortgage (c).

3. PROVIDED ALWAYS, &c. (*continue as in Forms Nos. 9, 9A if required, and 9B*). Proviso for redemption of freeholds.

4. THE Borrower hereby covenants, &c. (*continue as in Form No. 19, covenant to insure against fire*).

5. *Form No. 30 or No. 32, if required (reduction of interest).*

6. *Form No. 33, if required (mortgage for term certain).*

7. *Form No. 28, if required (mortgagees to concur in sales).*

8. PROVIDED ALWAYS, that upon any sale, &c. (*continue as in Form No. 15*).

9. THE Borrower, for himself and the persons deriving title under him hereby covenants, &c. (*continue as in Form No. 18, if required as to registration*).

10. *Form No. 40, if required (as to consolidation).*

11. THE powers of leasing conferred on a Mortgagor and Mortgagee, &c. (*continue as in Form No. 43, if required, as to statutory powers of leasing*).

12. For the purposes of these presents, section eighteen of the Conveyancing and Law of Property Act, &c. (*continue as in Form No. 48, if required as to accepting surrenders of leases*).

[13. THE provisions of sub-section 6 of section twenty-one of the Conveyancing and Law of Property Act, 1881, shall extend to any involuntary loss incurred in or about the exercise of any power hereby conferred (d).]

14. *Form No. 49 (as to duties on land values).*

[15. *Definition clause, if required, Form No. 50.*]

IN WITNESS, &c. (c).

(c) For parcels, see Purchase Deeds Forms, Sect. II., *sup*.

If a mortgage is to be made to trustees in consideration of a marriage, then the recitals can be adapted from the forms in Settlements (Personal), Vol. II. The trustees will agree to hold the debt on the trusts declared by the settlement of even date, and the mortgage deed will contain a power to appoint new trustees similar to the power in the settlement; this will enable the trusts affecting the money to be kept off the title to the land.

Mortgage in consideration of marriage.

(d) The sub-section only applies to losses in connexion with the power of sale. It is conceived, however, that an involuntary losses clause is of no value and may safely be omitted.

Involuntary losses.

(e) If deeds are handed to a mortgagee which relate to other property of the borrower, an acknowledgment of the right to production of the borrower should be taken under a 6*d.* stamp, for Conv. Act, 1881, s. 16, will not apply after the right of redemption is gone.

Deeds handed over which relate to other properties.

## No. II.

MORTGAGE of COPYHOLDS (*f*) by way of COVENANT to SURRENDER.

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. [E. F., of, &c., and G. H., of, &c.] (hereinafter called the Mortgagee[s]), of the other part :

Seisin of the borrower. WHEREAS the Borrower is seised of the hereditaments hereinafter described (being copyhold of the Manor of——, in the County of——) for an estate of inheritance in possession according to the custom of the said Manor free from incumbrances :

Agreement for advance. AND WHEREAS (*Form No. 2A*) :

NOW THIS INDENTURE WITNESSETH as follows :—

Preliminary clause. Covenant for payment of principal, [further advances] and interest. 1. IN pursuance, &c. (*continue as in Preliminary Clause, Form No. 3*), the Borrower hereby covenants, &c. (*continue as in Form No. 4*).

[AND ALSO, &c. (*continue as in Form No. 5, if required*).]

AND ALSO, &c. (*continue as in Form No. 6*).

Covenant to conditionally surrender copyholds by way of mortgage. 2. FOR the consideration aforesaid the Borrower hereby covenants, &c. (*continue as in Form No. 10*).

3. THE Borrower hereby covenants, &c. (*continue as in Form No. 10A, charge on copyholds, &c.*).

Appointment of Mortgagee as attorney to surrender the copyholds (*g*). 4. FOR the consideration aforesaid the Borrower hereby irrevocably appoints, &c. (*continue as in Form No. 10B*).

Effect of mortgage of copyholds. (*f*) Under this deed the mortgagee will have a power of sale and all other powers conferred on a mortgagee by s. 19 of the Conv. Act, 1881, but in order to pass the legal customary estate to a purchaser he must be admitted under the conditional surrender and then surrender to the purchaser.

Stamps. The 2s. 6*d.* *ad valorem* stamp will be on the conditional surrender and not on this deed of covenant : Stamp Act, 1891, s. 87 (4). This deed will bear a 6*d.* *ad valorem* stamp not exceeding 10s. Where the covenant to surrender is not followed immediately by a surrender the 2s. 6*d.* *ad valorem* stamp should be placed on the covenant to surrender : Alpe, 11th ed., 183; Highmore, 2nd ed. 176.

(*g*) This power of attorney should always be given unless the borrower surrenders at once to the use of the mortgagee.

(Add covenant for insurance, Form No. 19; Form No. 15 as to power of sale; also other special clauses, if required.)

5. Form No. 49 (as to duties on land values).

IN WITNESS, &c.

### No. III.

#### CONDITIONAL SURRENDER OF COPYHOLDS (*h*).

THE MANOR of —, } BE IT REMEMBERED, that on the  
in the County of —. } — day of —, A. B., of, &c. (herein-  
after called the Borrower), came before L. M., of, &c., steward of  
the said Manor, out of court, and in consideration of the sum of  
£— to the Borrower paid by C. D., of, &c. [E. F., of, &c., and  
G. H., of, &c.] (hereinafter called the Mortgagee[s]), surrendered  
into the hands of the lord of the said Manor, by the hands and  
acceptance of his said steward, according to the custom of the  
said Manor,

Surrender by  
Mortgagor

ALL, &c. (*parcels*; see *Purchase Deeds, Forms, Sect. II., sup.*). Parcels.  
(To which premises the Borrower was admitted tenant at a  
general court held for the said Manor on the — day of —).

To THE USE of the Mortgagee[s] and his [*or their*] heirs (*i*),  
at the will of the lord, according to the custom of the said  
Manor, by and under the rents, fines, heriots, suits and services  
therefor due and of right accustomed:

SUBJECT NEVERTHELESS TO THIS CONDITION, that if the Borrower  
or the persons deriving title under him shall on the — day of  
— next pay to the Mortgagee[s] or the persons deriving title  
under him [them] the sum of £—, with interest thereon at  
the rate of £— per cent. per annum, to be computed from  
the date of this surrender (being the same principal sum and  
interest as are secured by the covenant of the Borrower contained  
in an Indenture bearing even date herewith), then and in such  
case this surrender shall be void and of no effect, otherwise the  
same shall remain in full force.

subject to  
condition for  
making sur-  
render void on  
payment of  
mortgage debt  
and interest.

(*h*) See note to last Precedent as to stamps.

(*i*) S. 51 of the Conv. Act, 1881, which provides for the use of the words  
“in fee simple,” applies only to deeds.

This surrender was taken and accepted the day and year first above written by me.

Signed L. M. (*Steward*),  
Steward of the Manor.

#### No. IV.

#### MORTGAGE of LEASEHOLDS *by way of* SUB-DEMISE.

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. [E. F., of, &c., and G. H., of, &c.] (hereinafter called the Mortgagee[s]), of the other part :

Recital of Lease. WHEREAS by an Indenture of Lease, dated, &c. (*continue as in Form No. 28, Purchase Deeds, p. 304, sup., and recite shortly the covenant to insure against fire*) :

Agreement for advance. AND WHEREAS, &c., *Form No. 2A, sup.*

NOW THIS INDENTURE WITNESSETH as follows :—

Covenant to pay principal, 1. IN pursuance, &c. (*continue as in Form No. 3*), the Borrower hereby covenants, &c. (*continue as in Form No. 4*) :

[further advances,] [AND ALSO, &c. (*continue as in Form No. 5 if required*)]:

and interest. AND ALSO, &c. (*continue as in Form No. 6*).

Sub-demise of Leaseholds by way of mortgage. 2. IN further pursuance of the said Agreement and for the consideration aforesaid, the Borrower, As Beneficial Owner, hereby grants and demises, &c. (*continue as in Form No. 11*).

Trust of principal term. 3. THE Borrower hereby covenants with the Mortgagee[s], &c. (*continue as in Form No. 11A*).

Power to appoint new Trustees and to remove a Trustee (*k*). 4. THE Mortgagee[s] and the persons deriving title under him [them] shall have power, &c. (*continue as in Form No. 11B*).

Appointment of Mortgagee[s] as attorney[s] to assign original term (*k*). 5. FOR the consideration aforesaid the Borrower hereby irrevocably appoints, &c. (*continue as in Form No. 11C*).

6. PROVIDED ALWAYS, &c. (*continue as in Forms Nos. 9, 9A if necessary, and 9B, proviso for redemption*).

7. (*Add Form No. 19, or if the covenant in the lease is sufficient use the following covenant*). The Borrower hereby covenants

---

(*k*) These two Forms may be omitted if the land is registered and the mortgagee takes also a registered charge, as his power of sale then enables him to convey the head term, but it is better to retain Form No. 11B because the mortgagee may obtain a title by foreclosure or possession.

with the Mortgagee[s and with each of them] that the Borrower and the persons deriving title under him will at all times during the continuance of this security keep the hereditaments comprised in the recited Lease insured against loss or damage by fire in the sum of £—— at least in conformity with the covenant for that purpose contained in the recited Lease, and will pay all premiums payable in respect of such insurance within seven days after the same shall become due, and will on demand produce to the Mortgagee[s] and the persons deriving title under him [them] the policy of such insurance and the receipt for every premium payable in respect thereof (*l*). (*Add Form No. 15 and, if required, any special clauses.*)

8. *Add Form No. 49 (as to duties on land values).*

IN WITNESS, &c.

### No. V.

#### MORTGAGE *of* LEASEHOLDS *by* ASSIGNMENT.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. [E. F., of, &c., and G. H., of, &c.] (hereinafter called the Mortgagee[s]), of the other part (*m*):

WHEREAS by an Indenture of Lease dated, &c. (*continue as in Form No. 28, Purchase Deeds, p. 304, sup., and recite shortly the covenant to insure against fire, or recite creation of portions term, as the case requires (n)*):

AND WHEREAS (*Form No. 2A*):

(*l*) An express covenant as to insurance may at first sight appear superfluous having regard to s. 7 (1) (D) of the Conv. Act, 1881; but the express covenant enables the mortgagee to require evidence from time to time that an insurance is being kept on foot, which, it is apprehended, he would not have the right to require under the implied covenants. It moreover fits in better with the provisions as to insurance contained in ss. 19 and 23 of the Act.

(*m*) A mortgage of leaseholds is not usually taken in this form unless (*e.g.*, in the case of a portions term) there is no rent reserved and there are no onerous covenants affecting the lessee.

(*n*) In the case of mortgage to raise portions (see Prec. No. II., Group D, *inf.*), unless all the portions are raised together, only part of the property would be assigned. The trustees would not give any covenant to pay; instead there would be a declaration that "the premises hereinafter assigned shall stand charged with the payment on the — day of — next of the sum of £——, with interest thereon from the

Covenant by Borrower to keep premises insured according to covenant in Lease.

Parties.

Recital of Lease at a peppercorn rent.

Agreement for advance.

Reason for inserting covenant as to insurance though covenant to observe lessee's covenants is implied.

Mortgage by assignment, when used.

Mortgage to raise portions.

NOW THIS INDENTURE WITNESSETH as follows :—

Preliminary clause.

Covenant to pay principal,

[further advances,]

and interest.

Assignment of Leaseholds to Mortgagee[s].

1. IN pursuance, &c. (*continue as in Form No. 3*), the Borrower hereby covenants, &c. (*continue as in Form No. 4*):

[AND ALSO, &c. (*continue as in Form No. 5, if required*)]:

AND ALSO, &c. (*continue as in Form No. 6*).

2. FOR the consideration aforesaid the Borrower, As Beneficial Owner, hereby assigns unto the Mortgagee[s]

ALL the premises comprised in and demised by the recited Lease,

Habendum.

TO HOLD unto the Mortgagee[s] for the residue of the term granted by the recited Lease at the rent and subject to the lessee's covenants and the conditions by and in the said Lease reserved and contained, but subject to the proviso for redemption hereinafter contained.

Proviso for redemption.

3. PROVIDED ALWAYS, &c. (*continue as in Forms Nos. 9, 9A if necessary, and 9B*).

Covenant by Mortgagor of leaseholds to pay rent, &c. (a).

4. THE Borrower hereby covenants with the Mortgagee[s] that the Borrower or the persons deriving title under him will henceforth from time to time duly [pay all rent becoming due under the recited Lease and] observe and perform all the covenants (including the covenant to insure against loss or damage by fire) and conditions therein contained and henceforth on the part of the Lessee to be observed and performed:

AND ALSO will at all times hereafter save harmless and keep indemnified the Mortgagee[s] and his [their respective] estate[s] and effects from and against all proceedings, costs, claims and

date hereof at the rate of £— per cent. per annum, and so long as any principal money remains due under these presents after the said — day of — next with the payment to the Mortgagee [s] of interest thereon at the rate aforesaid by equal half-yearly payments on the — day of — and the — day of — in every year."

The habendum would be "for the residue of the said term of — years, from the — day of — created by the recited Settlement [Will] without impeachment for waste but subject to the proviso, &c."

The proviso for redemption should provide for the term to be surrendered so as to merge in the inheritance. In some cases the tenant for life will join to covenant to pay interest during his life.

(c) This covenant is only required if the rent is of any value or there are any lessee's covenants.

expenses on account of [any omission to pay the said rent or] any breach of any of the said covenants and conditions (*add Form No. 15 and special clauses, if required*).

5. *Add Form No. 49 (as to duties on land values).*

IN WITNESS, &c.

## No. VI.

### MORTGAGE *by* ASSIGNMENT *of* PROPERTY *comprised in* several LEASES.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. [E. F., of, &c., and G. H., of, &c.] (hereinafter called the Mortgagee[s]), of the other part :

Parties.

WHEREAS by the several Leases, the dates whereof and the parties to which are mentioned in the first and second columns of the Schedule hereto, the hereditaments described in the third column of the said Schedule were respectively demised to the Borrower for the respective terms and at the rents mentioned in the fourth and fifth columns of the said Schedule and subject to the lessee's covenants and the conditions respectively contained in the said Leases (*p*) :

Recital of several Leases to the borrower by reference to schedule.

AND WHEREAS (*Form No. 2A*) :

Agreement for advance.

NOW THIS INDENTURE WITNESSETH as follows :—

1. In pursuance, &c. (*continue as in Form No. 3*), the Borrower hereby covenants, &c. (*continue as in Form No. 4*) :

Preliminary Clause.

AND ALSO (*continue as in Form No. 6*).

Covenant to pay principal and interest.

2. For the consideration aforesaid the Borrower As Beneficial Owner, hereby assigns unto the Mortgagee[s]

Assignment to Mortgagee[s].

ALL the premises respectively comprised in and demised by the Leases mentioned in the Schedule hereto,

Parcels.

To HOLD unto the Mortgagee[s] for the residues of the several terms respectively granted by the said Leases, at the yearly rents and subject to the lessee's covenants and the conditions

(*p*) It is assumed that the rents are small and the covenants not onerous, so that the mortgage may be safely made by assignment; under the Small Dwellings Acquisition Act, 1899, it seems that the mortgage to the local authority must be by assignment, see p. 895, *inf*.

Mortgages under Small Dwellings Acquisition Act, 1899.

by and in the said Leases respectively reserved and contained, and subject also to the proviso for redemption hereinafter contained.

Proviso for redemption.

- 3. PROVIDED ALWAYS, &c. (*continue as in Forms Nos. 9 and 9E*).
- 4. *Add covenant by Borrower to pay rents, &c.; adapt Clause 4 of Precedent V. of this Group; also Form No. 15 and other special clauses, if required.*
- 5. *Add Form No. 49 (as to duties on land values).*
- IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

| Date. | Parties. | Particulars of Property. | Term. | Yearly Rent. |
|-------|----------|--------------------------|-------|--------------|
|       |          |                          |       |              |

No. VII.

MORTGAGE of a LEASEHOLD ESTATE for LIVES, with provisions for renewal (q). VARIATIONS where the Property is subject to UNDERLEASES.

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. [E. F., of, &c., and G. H., of, &c.] (hereinafter called the Mortgagee[s]), of the other part :

Recital of Lease for lives. WHEREAS by an Indenture of Lease dated, &c., and made BETWEEN L. M. of the one part, and the Borrower of the other part: ALL, &c. (*set out parcels as described in Lease*), were granted by the said L. M. unto the Borrower, his heirs and assigns (r), for

Right of Mortgagee to renew leaseholds. (q) When renewable leaseholds are made the subject of mortgage, the mortgage should contain a covenant by the mortgagor to renew, as he could not otherwise be compelled to do so. But the mortgagee may renew even in the absence of an express power to do so, and may hold the renewed lease as a security for the money he has expended in effecting the renewal, together with interest on such money: *Lacon v. Martins* (1743), 3 Atk. at p. 4.

Special occupancy. (r) On an intestacy the heir would in this case take as special occupant, though the lease would, it seems, if the death occurred after 1897, vest in the administrator under L. T. Act, 1897, s. 1, but in trust for the heir: *ib.*, s. 2 (1).

the lives of — and — (both of whom are still living) and of the survivor of them at the yearly rent of £—, and subject to the covenants by the lessee and the conditions by and in the recited Lease reserved and contained :

AND WHEREAS (*Form No. 2A*):

Agreement for advance.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance, &c. (*continue as in Form No. 3*), the Borrower hereby covenants, &c. (*continue as in Form No. 4*):

Preliminary Clause.

AND ALSO, &c. (*continue as in Form No. 6*).

Covenant to pay principal and interest.

2. FOR the consideration aforesaid the Borrower, As Beneficial Owner, hereby conveys unto the Mortgagee[s]

Conveyance of renewable leaseholds.

ALL the premises comprised in and demised by the recited Lease,

To HOLD unto the Mortgagee[s], his [their] heirs and assigns, for the lives of the said — and — and the life of the survivor of them, and for all other (if any) the estate and interest of the Borrower therein [but subject to and with the benefit of the Underleases mentioned in the Schedule hereto and] subject [also] to the proviso for redemption hereinafter contained.

Habendum

3. PROVIDED ALWAYS, &c. (*continue as in Forms Nos. 9 and 9B*).

Proviso for redemption.

4. THE Borrower hereby covenants with (*continue as in Form No. 19*).

Covenant to insure against fire.

5. THE Borrower hereby covenants with the Mortgagee[s] and with each of them] that the Borrower or the persons deriving title under him will from time to time, during the continuance of this security, on the death of any person or persons for whose life or lives the premises shall for the time being be held, concur with the Mortgagee[s] in obtaining a renewal of the subsisting Lease for the time being of the premises for a new life or new lives, as the case may be, to be added to the lives or life which shall be then in being, and so that every such renewed Lease shall be vested in the Mortgagee[s] subject to such right of redemption as shall then be subsisting under these presents: AND ALSO will pay the fines, fees, and other expenses of procuring or otherwise attending every such renewal of the said Lease, and the vesting of the same in the Mortgagee[s]. And that if for three calendar months next after the dropping of any life upon which the now subsisting Lease or any renewed Lease of the premises is or shall be held the Borrower shall not make

Covenant by Mortgagor to concur in all acts for renewal.

That if Mortgagor make default Mortgagor may renew.

Expenses of renewal to be borne by Mortgagor, and to be charged on the premises.

or concur in such renewal as aforesaid, the Mortgagee[s] may, if he [they] shall think proper, by surrender of the then subsisting Lease of the premises or otherwise, obtain such renewal of such Lease for the time being as aforesaid, subject to such right of redemption as aforesaid, and in such case the Borrower will immediately thereupon pay and reimburse to the Mortgagee[s] such money as he [they] shall have paid for the fines, fees or other expenses in or about the procuring or otherwise incidental to every such renewal, together with interest thereon at the rate of £5 per cent. per annum, from the time or respective times of the payment thereof: AND such money shall in the meantime be charged on the premises in addition to the principal money hereinbefore covenanted to be paid and the interest thereon.

(Add Form No. 15 and any other special clauses required.)

6. Add Form No. 49 (as to duties on land values).

IN WITNESS, &c.

#### THE SCHEDULE ABOVE REFERRED TO.

Particulars of Underleases affecting the property.

| Date of Underlease. | Parties. | Short Description of Property Demised. | Term. | Yearly Rent. |
|---------------------|----------|--|-------|--------------|
|                     |          |  |       |              |

#### No. VIII.

MORTGAGE of FREEHOLDS, COPYHOLDS (s), and LEASEHOLDS.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. [E. F., of, &c., and G. H., of, &c.] (hereinafter called the Mortgagee[s]), of the other part:

Recitals.

Seisin of freeholds and copyholds.

WHEREAS the Borrower is seised of the freehold hereditaments hereinafter described in fee simple in possession and is seised of

(s) The *ad valorem* stamp will be on this deed and no part of it on the conditional surrender of the copyholds: Stamp Act, 1891, s. 87 (5); Highmore, 2nd ed., 176.

the copyhold hereditaments hereinafter covenanted to be surrendered (being copyhold of the Manor of —, in the County of —, to which the Borrower was admitted tenant on the court rolls of the said Manor on the — day of —) for an estate of inheritance according to the custom of the said Manor and as to all the premises free from incumbrances :

AND WHEREAS by an Indenture of Lease dated, &c. (*continue as in Form No. 28, Purchase Deeds, p. 304, sup.*) :

Recital of Lease.

AND WHEREAS (*Form No. 2A*) :

Agreement for advance.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance, &c. (*continue as in Form No. 3*), the Borrower hereby covenants (*continue as in Form No. 4*) :

Preliminary Clause.

AND ALSO (*continue as in Form No. 6*).

Covenant to pay principal and interest.

2. FOR the consideration aforesaid, &c. (*continue as in Form No. 8*).

Conveyance of Freeholds by way of mortgage.

3. FOR the consideration aforesaid, &c. (*continue as in Form No. 11*).

Sub-demise of Leaseholds by way of mortgage.

4. THE Borrower hereby covenants, &c. (*continue as in Form No. 11A*).

Trust of principal term in mortgage by sub-demise.

5. THE Mortgagee[s] and the persons deriving title under him [them], &c. (*continue as in Form No. 11B*).

Power to appoint new Trustees.

6. FOR the consideration aforesaid the Borrower hereby irrevocably nominates, &c. (*continue as in Form No. 11C*).

Appointment of Mortgagee[s] as attorney[s] to assign original term.

7. PROVIDED ALWAYS, &c. (*continue as in Forms Nos. 9 and 9B, saying conveyed and demised respectively, and reconveyed and surrendered*).

Proviso for redemption of Freeholds and Leaseholds.

8. FOR the consideration aforesaid the Borrower, As Beneficial Owner, hereby covenants, &c. (*continue as in Form No. 10 as varied in note thereto*).

Covenant to surrender copyholds subject to a condition making void the surrender.

9. THE Borrower hereby covenants with the Mortgagee[s], &c. (*continue as in Form No. 10A*).

Charge on copyholds and declaration of trust until surrender.

10. FOR the consideration aforesaid, &c. (*continue as in Form No. 10B*).

Appointment of mortgagee[s] as attorney[s] to surrender the copyholds.

Covenant to insure against fire.

11. THE BORROWER hereby covenants, &c. (*continue as in Form No. 19*).

12. PROVIDED ALWAYS that upon any sale, &c. (*continue Form No. 15*).

(*Add special clauses, if required.*)

13. *Add Form No. 49 (as to duties on land values).*

IN WITNESS, &c.

### NO. IX.

MORTGAGE of an EQUITY of REDEMPTION in FREEHOLDS (*t*).

VARIATIONS where there have been several PRIOR MORTGAGES.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. [E. F., of, &c., and G. H., of, &c.] (hereinafter called the Mortgagee[s]), of the other part:

Recite first mortgage (*u*).

WHEREAS by an Indenture of Mortgage dated the —— day of ——, and made between the Borrower of the one part, and

Risk attending a second mortgage.

(*t*) A person lending money on the security of an equity of redemption incurs some risk. For example, the mortgagor may have previously made equitable mortgages in addition to the first mortgage, all which equitable mortgages will have priority, on the principle of *qui prior est tempore, potior est jure*. Again, if the mortgagor should, after executing such second mortgage, make a third mortgage, concealing from the third mortgagee the existence of the second mortgage, the third mortgagee may, by paying off the first mortgage, gain a priority over the second, upon the principle of tacking. See also note to Form No. 16A as to the difficulty for a second mortgagee to obtain possession.

Precautions to be taken by a person lending money on a second mortgage.

If, notwithstanding the above objections, the weight of which depends in each case upon the circumstances, a person agrees to lend money on a second mortgage, he should inquire of the first mortgagee how much is due upon his security; and when the second mortgage is completed, notice of it should be given to the first mortgagee. Such notice will prevent him from tacking any subsequent advance which he may make on the security of the property, although the original mortgage may be expressly made to cover future advances, see *Lloyd's Bank v. Pearson*, 1901, 1 Ch. 865; 70 L. J. Ch. 422; *Taylor v. London and County Bk.*, 1901, 2 Ch. 231; 70 L. J. Ch. 477.

(*u*) Where there have been several prior mortgages insert the following recitals:—

Variations where there have been several mortgages.

WHEREAS THE BORROWER is entitled in fee simple in possession to the hereditaments hereinafter described subject to the Indentures of Mortgage respectively mentioned in the schedule hereto, but otherwise free from incumbrances:

L. M. of the other part, the hereditaments hereinafter described were conveyed by the Borrower unto and To the Use of the said L. M. in fee simple, subject to a proviso for redemption on payment by the Borrower to the said L. M. of the sum of £500, with interest thereon as therein mentioned :

AND WHEREAS the said principal sum of £500 and the current interest thereon still remains owing on the security of the recited Mortgage :

That principal sum remains due on first mortgage.

AND WHEREAS (*Form No. 2A*) :

Agreement for advance.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance, &c. (*continue as in Form No. 3*), the Borrower hereby covenants, &c. (*continue as in Form No. 4*) :

Covenant to pay principal

AND ALSO, &c. (*continue as in Form No. 6*).

and interest.

2. For the consideration aforesaid, the Borrower, As Beneficial Owner, hereby conveys unto the Mortgagee[s]

Conveyance.

ALL THAT, &c. (*x*),

Parcels.

To HOLD unto and To THE USE of the Mortgagee[s] in fee simple, subject to the recited Mortgage (*y*) and to the principal sum and interest thereby secured, and subject also to the proviso for redemption hereinafter contained.

Habendum.

3. PROVIDED ALWAYS (*continue as in Forms Nos. 9 and 9B*).

Proviso for redemption.

4. (i.) THE Mortgagee[s], &c. (*continue Form No. 16A*).

5 and 6. *Add Forms Nos. 15 and 49, and special clauses as required.*

Provision as to obtaining possession.

IN WITNESS, &c. (*z*).

AND WHEREAS the several principal sums mentioned in that Schedule now remain owing on the respective securities therein mentioned with the current interest thereon.

(*x*) For parcels, see Forms, Sect. II., Purchase Deeds, *sup*.

(*y*) Where there are several prior mortgages say :—

Subject to the Indentures of Mortgage respectively mentioned in the Schedule hereto and to the principal money and interest thereby respectively secured.

(*z*) Add schedule of prior mortgages, if required, as follows :—

#### THE SCHEDULE ABOVE REFERRED TO.

(*date*) Indenture of Mortgage of this date made between, &c. (being a Mortgage for securing the principal sum of £—— and interest).

(*date*) Indenture of Mortgage, &c.

## No. X.

MORTGAGE *with the CONCURRENCE of a PRIOR MORTGAGEE, who POSTPONES his MORTGAGE (a).*

Parties. THIS INDENTURE, made, &c., BETWEEN L. M., of, &c. (*prior Mortgagee*), of the 1st part, A. B., of, &c. (hereinafter called the Borrower), of the 2nd part, and C. D., of, &c. [E. F., of, &c., and G. H., of, &c.] (hereinafter called the Mortgagee[s]), of the 3rd part:

Recital of prior Mortgage. WHEREAS by an Indenture of Mortgage dated, &c. (*continue recital of Mortgage in fee from the Borrower to L. M. as in last Precedent*):

State of mortgage debt. AND WHEREAS the principal sum of £—, &c. (*continue recital as in last Precedent*):

Agreement for advance. AND WHEREAS (*Form No. 2A*):

Agreement by prior Mortgagee to postpone his security. AND WHEREAS the said L. M. has agreed to postpone his aforesaid security to the security intended to be hereby made in manner hereinafter appearing:

NOW THIS INDENTURE WITNESSETH as follows:—

Preliminary Clause. 1. In pursuance, &c. (*continue as in Form No. 3*), the Borrower hereby covenants, &c. (*continue as in Form No. 4*):

Covenant to pay principal and interest. AND ALSO (*continue as in Form No. 6*).

Conveyance by prior Mortgagee and Borrower. 2. For the consideration aforesaid the said L. M., As Mortgagee, at the request of the Borrower, hereby conveys and the Borrower, as Beneficial Owner, hereby conveys and confirms unto the Mortgagee[s]

ALL, &c. (*see Forms, Sect. II., Purch. Deeds*).

To HOLD unto and To THE USE of the Mortgagee[s] in fee simple:

Proviso for redemption. PROVIDED ALWAYS (*Form No. 9, sup., and continue*) the premises hereinbefore conveyed shall, at the cost of the Borrower or the persons deriving title under him, be reconveyed To THE

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(a) The postponement of a mortgage implies an indemnity by the mortgagor in favour of the mortgagee whose security is postponed: *Ex p. Ford* (1885), 16 Q. B. D. 305; 55 L. J. Q. B. 406, and see *Kruger v. Moel, &c. Co.*, 1907, A. C. 272; 76 L. J. K. B. 985.

USE of the said L. M. in fee simple, subject to such right of redemption as shall be subsisting therein under the recited Mortgage.

3. THE Borrower and the said L. M. hereby agree that, subject to the security hereby made, the recited Mortgage and all powers and provisions therein contained shall remain in full force.

Prior Mortgage to take effect as a second Mortgage.

4 and 5. *Add Forms Nos. 15 and 49 and any special clauses required.*

6. THE said L. M. hereby acknowledges the right of the Mortgagee[s] to production of the recited Mortgage (*b*) and to delivery of copies thereof.

Acknowledgment of right to production.

IN WITNESS, &c.

## NO. XI.

MORTGAGE of FREEHOLDS to secure the RE-TRANSFER of STOCK, and the PAYMENT in the meantime of INTEREST equal to the DIVIDENDS thereof (*c*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part :

Parties.

WHEREAS the Borrower is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described :

Recital of seisin of Mortgagor.

AND WHEREAS the Mortgagee has agreed to advance to the Borrower the sum of £—— (being the net proceeds of the sale of a sum of £—— £2 10s. per cent. Consolidated Stock, recently standing in the name of the Mortgagee in the books of the Governor and Company of the Bank of England), upon having the transfer of a like sum of stock and the payment in the

Agreement for advance of proceeds of Consols.

(*b*) This assumes that the other deeds will be handed over to the new mortgagee.

(*c*) The provisions relating to mortgages in the Conv. Act, 1881, including the statutory power of sale, apply to a mortgage to secure stock, which is included in the expression “ money’s worth,” see s. 2 (vi.).

Conv. Act, 1881, applies to a mortgage to secure stock.

Trustees cannot invest on stock mortgages unless expressly authorised: *Whitney v. Smith* (1869), L. R. 4 Ch. 513; *Bromley v. Kelly* (1870), 39 L. J. Ch. 274.

meantime of an annual sum in lieu of dividends secured to him in the manner hereinafter appearing :

NOW THIS INDENTURE WITNESSETH as follows :—

Covenant by  
Mortgagor to  
transfer stock,  
and to pay in  
the meantime  
sums equal to  
dividends.

1. IN pursuance of the said agreement and in consideration of the sum of £ — (the proceeds of the sale of the said stock) now paid by the Mortgagee to the Borrower (*the receipt, &c.*), the Borrower hereby covenants with the Mortgagee to transfer, or cause to be transferred, into the name of the Mortgagee in the books of the Governor and Company of the Bank of England, on the — day of — next, the sum of £ — £2 10s. per cent. Consolidated Stock, and in the meantime, and until such transfer, to pay to him such money as shall be equal in amount to the dividends which he would have been entitled to receive on account of the said stock, if the same had continued standing in his name, such payments to be made at such times as the said dividends would have become payable.

Conveyance.

2. For the consideration aforesaid, the Borrower, As Beneficial Owner, &c. (*continue as in Form No. 8*) :

Proviso for  
redemption.

3. PROVIDED ALWAYS, that if the covenant of the Borrower hereinbefore contained shall be duly performed, the premises hereby conveyed shall, at the request and cost of the Borrower or the persons deriving title under him, be reconveyed to him or them.

(*Add Forms Nos. 15 and 49 and any special clauses required.*)

IN WITNESS, &c.

## No. XII.

MORTGAGE *of* FREEHOLDS *to secure the* RE-TRANSFER *of*  
STOCK *lent and* PAYMENT *of* INTEREST *on* PROCEEDS *in*  
*the* MEANTIME (*d*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part :

Recital of  
seisin of  
Mortgagor.  
Agreement for  
advance.

WHEREAS the Borrower is seised (*continue Form No. 1.*)

AND WHEREAS the Mortgagee has agreed to advance to the Borrower the sum of £ — (being the net proceeds of the sale of a

---

(*d*) See notes to last Precedent.

sum of £—— £2 10s. per cent. Consolidated Stock lately standing in the name of the Mortgagee in the books of the Governor and Company of the Bank of England), upon having a transfer of a like sum of stock, and the payment in the meantime of interest on the said sum of £—— secured to him in manner hereinafter appearing :

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration, &c. (*as in last Precedent*), the Borrower hereby covenants with the Mortgagee to transfer or cause to be transferred into the name of the Mortgagee in the books of the Governor and Company of the Bank of England, on the —— day of —— next, the sum of £—— £2 10s. per cent. Consolidated Stock, and at the same time to pay to him interest on the said sum of £—— (*proceeds of sale of stock*), at the rate of £— per cent. per annum, from the date of these presents :

Covenant to transfer stock, and to pay interest on proceeds.

AND if the said sum of £—— £2 10s. per cent. Consolidated Stock shall not be transferred as aforesaid on the said —— day of —— next, then to pay to him interest at the rate aforesaid, on the said sum of £—— (*proceeds of sale*), or on such sum as shall bear the same proportion to the said sum of £—— (*proceeds of sale*) as the £2 10s. per cent. Consolidated Stock for the time being owing on the security of these presents shall bear to the said sum of £—— like stock, by equal half-yearly payments on the —— day of—— and the —— day of —— in every year until the whole of the last-mentioned sum of £2 10s. per cent. Consolidated Stock shall have been transferred as aforesaid.

(*Conveyance to Mortgagee subject to proviso for redemption, and other clauses, as in last Precedent.*)

IN WITNESS, &c.

## No. XIII.

MORTGAGE *by* ASSIGNMENT *of* a BUILDING LEASE *to secure the repayment of* SUMS *advanced and to be advanced to the LESSEE for the purpose of enabling him to complete several Unfinished Houses.* VARIATIONS *where Mortgage is by* SUB-DEMISE.

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part.

Recital of Building Lease to Mortgagor. WHEREAS by an Indenture of Lease dated the — day of —, and made, &c. ALL that piece of land, &c. (*parcels as in Lease*), was demised to the Borrower for the term of — years from the — day of — at the yearly rent[s] of £ — and subject to the covenants by the Borrower and the conditions contained in the said Lease, and in particular to a covenant by the Borrower for the erection of buildings and executing works on the land thereby demised and otherwise as therein mentioned :

That Mortgagor has begun to build. AND WHEREAS pursuant to the aforesaid covenant contained in the recited Lease the Borrower has commenced the erection of buildings on the piece of land comprised in the recited Lease :

Agreement by Mortgagee to lend Mortgagor money to complete buildings. AND WHEREAS the Borrower requires the sum of £ — for the purpose of enabling him to complete the said buildings, and has requested the Mortgagee to advance the same to him, which the Mortgagee has agreed to do in two separate sums (that is to say), the sum of £ — immediately on the execution of these presents, and the sum of £ — if and when all the buildings erected or to be erected, pursuant to the aforesaid covenant of the Borrower, shall have been covered in, on having the said sums of £ — and £ —, with interest thereon, respectively secured in manner hereinafter appearing :

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said Agreement and in consideration of the sum of £ — paid by the Mortgagee on or before the execution of these presents to the Borrower (*the receipt, &c.*), and in consideration of the covenant by the Mortgagee hereinafter contained, the Borrower hereby covenants with the Mortgagee to pay to him on the — day of — next the sum of £ —,

Covenant by Mortgagor to

with interest thereon at the rate of £— per cent. per annum, from the date hereof: repay sum now advanced,

AND ALSO to pay to the Mortgagee the money which shall be hereafter advanced by him to the Borrower pursuant to the covenant for that purpose hereinafter contained on the first half-yearly day hereby fixed for payment of interest which happens after the date of the advance, with interest thereon at the rate aforesaid, from the date of each advance: and further sum when advanced,

AND ALSO so long as any principal money remains due under these presents after the day hereby fixed for payment thereof to pay to the Mortgagee interest thereon at the rate aforesaid by equal half-yearly payments on the — day of — and the — day of — in every year. and to pay interest half-yearly.

2. FOR the consideration aforesaid the Borrower, As Beneficial Owner, hereby assigns [demises] unto the Mortgagee, Assignment of leaseholds.

ALL the premises comprised in and demised by the recited Lease, and all buildings erected or to be erected thereon,

TO HOLD unto the Mortgagee for the residue of the term granted by the recited Lease [except the last — days thereof (e)].

3. PROVIDED ALWAYS, that on payment on the dates hereinbefore fixed for payment thereof by the Borrower or the persons deriving title under him to the Mortgagee or the persons deriving title under him of the principal sums hereinbefore covenanted to be paid with interest thereon respectively from the dates aforesaid at the rate of £— per cent. per annum, the premises hereinbefore assigned [demised] shall at the request and cost of the Borrower or the persons deriving title under him be duly reassigned [surrendered] to him or them. Proviso for redemption.

4. THE Borrower hereby covenants with the Mortgagee that the Borrower will before the — day of — complete the buildings hereby assigned [demised], and all other the buildings which ought to be erected on the said piece of land pursuant to his covenant for that purpose contained in the recited Lease, and that in case he shall neglect so to do then the Mortgagee or the Covenant by Mortgagor to complete buildings, with power on default for Mortgagee to finish them (f).

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(e) If the mortgage is by sub-demise, then Forms Nos. 11, 11A, 11B, and 11C should be substituted for this clause.

(f) S. 19 of the Conv. Act, 1881, does not authorise a sale of machinery, &c., without the land: *Re Yates* (1888), 38 Ch. D. 112; 57 L. J. Ch. 697; and an express power to sell the chattels would be void under s. 7 of the Bills of Sale Act, 1878.

Premises in such case to be a security for money expended by Mortgagee, as well as other money.

persons deriving title under him may enter upon the premises and complete the buildings, and that all money which he or they shall expend thereon, with interest thereon at the rate aforesaid from the time or respective times of expending the same, shall be repaid by the Borrower to him or them on demand, and shall in the meantime be charged on the premises, in addition to the other money hereby secured.

Covenant by Mortgagee to advance further sum on buildings being covered in.

5. THE Mortgagee hereby covenants with the Borrower that if and when all the buildings erected and to be erected as aforesaid shall be covered in, and if up to that time all the covenants herein contained on the part of the Borrower (other than the covenant for payment of the said principal sum of £—— on the —— day of —— next) shall have been duly observed and performed, the Mortgagee will advance to the Borrower the further sum of £——, with interest at the rate aforesaid, on the security of these presents.

6. *Covenant to insure, Form No. 19.*

7. *Power to appoint receiver, Form No. 13.*

8. *Provision for reduction of interest, Form No. 32.*

9. *Mortgage to continue for term certain, No. 33.*

10. *As to power of sale, Form No. 15.*

11. *Power to consolidate, if required, Form No. 40.*

12. *Consent to Leases, Form No. 41.*

13. *As to land value duties, Form No. 49.*

*(Add any other special clauses, if required.)*

IN WITNESS, &c.

#### No. XIV.

MORTGAGE *by a BUILDER of a BUILDING AGREEMENT (g)*  
*entitling him to SEPARATE LEASES as the Houses are com-*  
*pleted to secure ADVANCES to be made for completing the*  
*Houses. VARIATION where the Leases have to be registered*  
*under the L. T. Acts.*

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part:

Assignment of benefit of building agreements.

(g) Generally, a building agreement does not create any term; hence the security should be taken by assignment.

WHEREAS under an Agreement (hereinafter called the Agreement of 19—) dated the — day of —, and made between E. F. of the one part, and the Borrower of the other part, the Borrower is erecting — houses and other buildings upon the hereditaments mentioned in the Schedule hereto and will be entitled to a separate lease to be granted by the said E. F. of each of such houses respectively and the sites thereof, if and when each of such houses is completed as therein mentioned:

Recital of Building Agreement between freeholder and builder.

AND WHEREAS the Mortgagee has agreed to make advances to the Borrower from time to time in order to enable him to complete the houses and buildings on the said land pursuant to the Agreement of 19—, upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing:

Agreement for loan.

NOW THIS INDENTURE WITNESSETH as follows:—

1. (i.) IN pursuance of the said agreement, the Mortgagee hereby covenants with the Borrower that the Mortgagee will advance to the Borrower such sums as are next hereinafter mentioned (that is to say), the sum of £— immediately on the execution of these presents, and in respect of each house built by the Borrower on the said land pursuant to the Agreement of 19— the further sum of £—, one moiety thereof to be advanced if and when each house shall be covered in, and the other moiety thereof if and when the same house shall be completed so as to be fit for habitation:

Mortgagee covenants to make advances as each house is covered in and completed.

(ii.) PROVIDED ALWAYS, that the Mortgagee shall not be bound to make any such advance as aforesaid, unless and until his surveyor shall have certified in writing that the house in respect of which the advance is to be made has been covered in or completed (as the case may be) to the satisfaction of such surveyor and in conformity with the Agreement of 19—, and the fee of the surveyor for inspecting the house and certifying as aforesaid (not exceeding in each case the sum of £—) shall be paid by the Borrower.

Proviso that Mortgagee need not make advance until surveyor has certified that house has been properly built, &c.,

(iii.) PROVIDED ALSO, that the Mortgagee shall not be bound to make any such advance as aforesaid, unless up to the time when such advance ought to be made under the foregoing covenant the Borrower shall have duly paid the interest on the principal money for the time being owing on this security, on the half-yearly days hereinafter fixed for payment of such interest, or within fourteen

nor unless Mortgagor has paid interest punctually and observed his covenants.

days thereafter, and shall have duly observed all the covenants by the Borrower herein contained (other than the covenant contained in clause 2 hereof).

Mortgagor  
covenants to  
repay advances

2. IN consideration of the advances to be made as aforesaid the Borrower hereby covenants with the Mortgagee that the Borrower will repay to the Mortgagee every sum of money advanced by him pursuant to clause 1 hereof on the first half-yearly day hereby fixed for payment of interest which happens after the date of each advance, with interest thereon from the date of each advance, at the rate of £— per cent. per annum; and if the same shall not be repaid at the time or times aforesaid will thenceforth pay to the Mortgagee interest thereon at the rate aforesaid by equal half-yearly payments on the — day of — and the — day of — in every year, until the aggregate principal money shall be fully repaid.

and to pay  
interest half-  
yearly.

Assignment  
of benefit  
of building  
agreement.

3. FOR the consideration aforesaid the Borrower, As Beneficial Owner, hereby assigns unto the Mortgagee

ALL the hereditaments comprised in the Agreement of 19—, and the full benefit of the said Agreement,

To HOLD the same unto the Mortgagee absolutely:

PROVIDED ALWAYS, that the Borrower shall at his own expense have a reassignment of the premises upon payment of all money advanced to him by the Mortgagee, with interest thereon pursuant to clause 2 hereof.

4. *Covenant to insure, Form No. 19.*

Mortgagor  
covenants to  
build accord-  
ing to Agree-  
ment, and to  
observe Agree-  
ment.

5. THE Borrower hereby covenants with the Mortgagee that the Borrower will complete the — houses in accordance with the provisions of the Agreement of 19— at the times and in the manner therein prescribed, and will pay the rent made payable by the said Agreement and observe and perform all the provisions thereof.

Power to  
Mortgagee in  
certain cases  
to enter and  
complete  
buildings.

6. IF the Borrower shall make default in the repayment of any principal money hereby secured on the day hereby appointed for payment thereof, and also for thirty days after payment thereof shall have been demanded, or shall make default in any half-yearly payment of interest payable under these presents or any part thereof for fourteen days after the day hereby fixed for such payment, or shall commit any breach of any of the Mortgagee's covenants herein contained (other than the covenant contained in clause 2 hereof), or shall

become bankrupt during the continuance of this security, then and in any of such cases the Mortgagee may at any time thereafter enter upon and take possession of the hereditaments hereby assigned and complete any houses or buildings thereon which may be unfinished in such manner as he may think fit, and add the money expended in so doing, with interest thereon at the rate aforesaid, from the time of expending the same to the other principal money and interest hereby respectively secured, so as to be an additional charge on the premises.

7. THE power of sale conferred by the Conveyancing and Law of Property Act, 1881, may be exercised free from the restrictions imposed by section twenty of that Act, and upon, &c. (*continue Form No. 15*). Power of sale.

8. ANY demand for payment of the money hereby secured may be made by a notice in writing given to the Borrower or to one of his executors or administrators, or left at his usual or last known place of abode or business, or left upon or affixed to some part of the land comprised in the Agreement of 19—, or some building thereon, and the provisions of section sixty-seven of the Conveyancing and Law of Property Act, 1881, shall apply to all such notices. How demand may be made (*ggg*).

9. THE Borrower hereby covenants with the Mortgagee that the Borrower will at his own expense procure from the said E. F. (*the freeholder*) a separate Lease of each of the said houses if and when such Lease can be required in accordance with the Agreement of 19—, and will procure such Lease to be granted either to the Borrower or his nominee or to the Mortgagee as the Mortgagee may determine, and in case the Lease shall be granted to the Borrower, then will forthwith at his expense execute and deliver to the Mortgagee a valid mortgage of the premises comprised therein, either by way of sub-demise (with such provisions for getting in the head term as the Mortgagee may require) or by way of assignment, for the purpose of securing the money which shall then be owing to the Mortgagee upon this security, or such part of the said money as the Mortgagee may think fit to allocate to the premises comprised in that particular Lease, with interest thereon at the rate aforesaid. And every such Mortgage shall contain such powers and provisions as the Mortgagee shall reasonably require [and every Lease shall be Mortgagor covenants to procure Leases from freeholder, and to execute mortgages to Mortgagee of premises comprised in Leases.

(*ggg*) See *Worthington v. Abbott*, 1910, 1 Ch. 588; 79 L. J. Ch. 252.

registered at the like expense under the Land Transfer Acts, 1896 and 1897, and the Mortgagee shall be entitled at the expense of the Borrower to require a charge to be registered under those Acts and a notice to protect any sub-term created by any such mortgage as aforesaid (*h*)].

10. (*Declaration as to leasing power, Form No. 41. Add any other special clauses required.*)

11. *Add Form No. 49 (as to duties on land values).*

12. *Definition Clause, Form No. 50.*

IN WITNESS, &c. (*i*).

#### THE SCHEDULE ABOVE REFERRED TO.

Particulars of the hereditaments comprised in the Agreement of 19—.

#### No. XV.

MORTGAGE of a FREEHOLD MINING PROPERTY (*k*), with provisions extending the STATUTORY POWERS of LEASING to MINING LEASES,—PROVISIONS for setting apart a PROPORTION of the RENTS and ROYALTIES payable under the MINING LEASES, and INVESTING same in the NAMES OF TRUSTEES to constitute a SINKING FUND in aid of the PRINCIPAL SECURITY.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the 1st part, C. D., of, &c. (hereinafter called the Mortgagee), of the 2nd part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Trustees), of the 3rd part.

Recital of seisin of Mortgagor.

WHEREAS the Borrower is seised (*Form No. 1*)

Agreement for advance.

AND WHEREAS (*Form No. 2A*):

Power of attorney to accept leases and execute mortgages, &c.

(*i*) If desired the borrower can give an irrevocable power of attorney to the mortgagee to execute the counterpart leases, the mortgages, registered charges, and to apply for the registration of the notice; *Form No. 11c* can be adapted.

(*j*) Notice of the assignment should be given to the lessor, and it should be seen that any required licence to assign is obtained.

(*k*) A mortgage by a colliery company passes the business although not expressly mentioned: *Gloverston County Bk. v. Rudry, &c. Co.*, 1895, 1 Ch. 629; 64 L. J. Ch. 451.

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance, &c. (*continue as in Form No. 3*), the Borrower hereby covenants (*continue as in Form No. 4*):

Preliminary Clause.

Covenant for payment of principal and interest.

Conveyance of freeholds by way of mortgage.

AND ALSO, &c. (*continue as in Form No. 6*).

2. For the consideration aforesaid (*continue as in Form No. 8*),

To HOLD unto and To THE USE of the Mortgagee in fee simple, subject (so far as the premises are respectively affected thereby) to and with the benefit of the Mining and other Leases mentioned in the — Schedule hereto and as to all the premises, subject to the proviso for redemption following (that is to say),

3. PROVIDED ALWAYS, &c. (*continue as in Forms Nos. 9 and 9B*).

Proviso for redemption.

4. THE Mortgagee and the persons deriving title under him shall have and may exercise as incident to the power of sale conferred by the Conveyancing and Law of Property Act, 1881, all the powers of and incidental to sales which are by the Settled Land Acts, 1882 to 1890, conferred on a tenant for life in possession of land, and in particular (without prejudice to the generality of this clause) the powers of dealing with the surface and minerals separately and of granting or reserving any easements, rights or privileges in connexion with mining or other purposes, and upon etc. (*continue Form No. 15*).

Extension of statutory power of sale.

5. (*Form No. 43, omitting, if desired, the sub-clauses (i.) and (ii.).*)

Power to grant Mining Leases.

6. (*Form No. 48, power to accept surrenders of leases; add any other special clauses required.*)

7. THE Borrower hereby covenants with the Mortgagee, and also as a separate covenant with the Trustees, that so long as the rents, royalties and other payments reserved or made payable by any Mining Lease mentioned in the — Schedule hereto, or which shall have been granted by the Borrower or the persons deriving title under him under the power hereinbefore contained, shall be received by the Borrower or the persons deriving title under him, then the Borrower, or the persons deriving title under him, will, immediately upon every receipt of the same rents, royalties or other payments respectively, pay one third part thereof to the Trustees (which expression, where the context so admits, includes the survivor of them and the executors or administrators of such survivor or other the trustees or trustee for the time being hereof), to be held Upon the trusts herein-after declared concerning the same :

Covenant by Borrower to pay one-third of rents, &c., received on Mining Leases to Trustees;

and to make  
and deliver  
statements and  
accounts of  
such rents.

AND ALSO will, in order to enable the Trustees to ascertain from time to time the amount payable to them under the covenant lastly hereinbefore contained, from time to time make and deliver or cause to be made and delivered to them or him true and correct statements and accounts of the rents, royalties, and other payments which shall from time to time become payable under any such Lease as aforesaid.

Trust  
after paying  
expenses to  
invest money  
and accumu-  
late at com-  
pound interest.

8. THE Trustees shall, out of the money paid to them or him as aforesaid, in the first place pay all the costs and expenses incurred by the Trustees, or by the Mortgagee, in or about the obtaining payment and receiving of the said money, or otherwise in relation to the premises, and shall invest the residue of the said money in the names of the Trustees in any of the investments authorised by law for the investment of trust money, with power from time to time to vary such investments for others of a like nature, but so that every such variation of investment be made with the consent of the Mortgagee, and shall from time to time accumulate the annual income of the said money and the investments representing the same, hereinafter called the Trust Fund, in the way of compound interest, by investing the same and the resulting income thereof in manner aforesaid, with a like power of varying the investment thereof.

Trust for  
payment of  
principal and  
interest due.

9. If default shall be made in payment of any principal money or interest hereby secured at the respective times when the same respectively ought to be paid under these presents, then and in such case the Trustees shall upon the request of the Mortgagee sell, call in and convert into money all or any part of the Trust Fund and accumulations and apply the money arising therefrom, in the first place in payment of the costs and expenses of such sale, calling in and conversion, or otherwise incurred in relation to the premises, and in the next place in or towards satisfaction and discharge of the principal money and interest then owing upon the security of these presents.

Ultimate trust  
for Borrower.

10. SUBJECT to the trusts aforesaid, the Trustees shall stand possessed of the Trust Fund and accumulations In trust for the Borrower absolutely.

Power to  
appoint new  
Trustees.

11. THE statutory power of appointing a new Trustee in the place of the said E. F., or any trustee appointed in his place,

shall be vested in the Borrower and the persons deriving title under him, and the power of appointing a new Trustee in the place of the said G. H., or any trustee appointed in his place, shall be vested in the Mortgagee and the persons deriving title under him.

12. ANY trustee in the conduct of the trust business may instead of acting personally employ and pay an agent, whether being a solicitor or any other person, to transact all business and to do all acts required to be done in the trust, including the receipt and payment of money. And any trustee, being a solicitor or other person engaged in any profession or business, shall be entitled to be paid all usual professional or proper charges for business transacted, time expended, and acts done by him or any partner of his in connexion with the trusts hereof, including acts which a trustee not being in a profession or business could have done personally.

Power for Trustees to employ agents and costs of professional trustees.

13. (*Add Form No. 49 as to duties on land values.*)

14. (*Add definition clause, Form No. 50.*)

IN WITNESS, &c.

(*Add schedule of Mining Leases, &c.*)

## NO. XVI.

CONVEYANCE *of* FREEHOLDS *by way of* ADDITIONAL SECURITY SUPPLEMENTAL to the PRINCIPAL MORTGAGE (*l*), where the MONEY is to be left for a TERM CERTAIN.

THIS INDENTURE, made, &c., BETWEEN A. B. (hereinafter called the Borrower) of the one part, and C. D. [E. F. and G. H.] (hereinafter called the Mortgagee[s]) of the other part, supplemental to an Indenture of Mortgage (hereinafter called the Principal Indenture) dated, &c. (being a mortgage of freehold hereditaments at —, in the County of —, for securing payment to the Mortgagee[s] of the principal sum of £5,000 and interest):

Parties.

Supplemental to mortgage.

WHEREAS the said sum of £5,000, with the current interest thereon, remains owing on the security of the Principal Indenture:

State of debt.

AND WHEREAS the Borrower, being seised in fee simple free

Agreement to give further security.

(*l*) In this case the principal mortgage is supposed to have been made some time previously. This Precedent may be used where the mortgagee threatens to exercise his statutory powers unless further security is given. The stamp will be 6*d.* for every £100 secured by the mortgage up to 10*s.*: Revenue Act, 1903, s. 7.

from incumbrances, has agreed to convey the hereditaments hereinafter described to the Mortgagee[s] by way of further security for the said principal sum and the interest thereon in manner hereinafter appearing:

NOW THIS INDENTURE WITNESSETH as follows:—

Preliminary  
Clause.

1. IN pursuance of the said agreement and in consideration of the Mortgagee[s] not requiring immediate payment of the said sum of £5,000 so remaining owing as aforesaid, the Borrower, As Beneficial Owner, hereby conveys unto the Mortgagee[s]

Conveyance.

ALL, &c. (*see Purchase Deeds Forms, Sect. II., sup.*),

Habendum.

To HOLD unto and To THE USE of the Mortgagee[s] in fee simple subject to the like right of redemption as the hereditaments comprised in the Principal Indenture are now subject to under that Indenture, and so that all the powers and provisions contained in the Principal Indenture shall so far as may be extend and apply to the hereditaments hereby conveyed in the same manner as if the said hereditaments had been included in and conveyed by the Principal Indenture.

Mortgage to  
remain for  
term certain.

2. (*Adapt Form No. 33, referring, where necessary, to the Principal Indenture.*)

(*Add other special provisions, if required for varying the mortgage (u).*)

3. (*Add Form No. 49 as to duties on land values.*)

IN WITNESS, &c.

## No. XVII.

### MORTGAGE of FREEHOLDS by way of COLLATERAL SECURITY (o).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. [E. F., of, &c., and G. H., of, &c.] (hereinafter called the Mortgagee[s]), of the other part:

(u) If the additional security comprises a different class of property, *e.g.*, leaseholds, the usual provisions applicable thereto must be employed.

(o) It is sometimes desirable to keep the titles to two estates to be included in the same security distinct by having two separate deeds. The above Precedent is adapted to such a case. The *ad valorem* stamp will be imposed on the principal mortgage. As to stamp see note to last Precedent.

WHEREAS the Borrower is seised, &c. (*Form No. 1*) :

Seisin of  
Borrower.  
Recital of  
principal  
mortgage  
deed.

AND WHEREAS by an Indenture bearing even date with but executed before these presents, and made between the same parties as the parties hereto, in consideration of the sum of £5,000 paid by the Mortgagee[s] to the Borrower, certain hereditaments situated in the Parish of —, in the County of —, were conveyed by the Borrower unto the Mortgagee[s] in fee simple by way of mortgage for securing the payment to him [them] on the — day of — of the principal sum of £5,000, with interest thereon at the rate of £5 per cent. per annum, payable on the — day of — and the — day of — in every year :

AND WHEREAS upon the treaty for the said advance of £5,000 it was agreed that the repayment thereof, with interest, should be further secured by a mortgage of the hereditaments hereinafter described in the manner hereinafter appearing :

Agreement  
for further  
security.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £5,000 so paid by the Mortgagee[s] to the Borrower as aforesaid (the payment whereof the Borrower hereby acknowledges), the Borrower, As Beneficial Owner, hereby conveys, &c. (*continue as in Form No. 8*).

Conveyance.

2. PROVIDED ALWAYS (*continue as in Forms Nos. 9 and 9B*).

3. (*Add Form No. 15 as to power of sale.*)

4. (*Add Form No. 49 as to duties on land values.*)

(*Add other special clauses, if required.*)

IN WITNESS, &c.

## GROUP B.—MORTGAGES BY CO-OWNERS AND MARRIED WOMEN.

### No. I.

#### MORTGAGE of FREEHOLDS and LEASEHOLDS by TENANTS in COMMON (*p*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Borrowers), of the one part, and

Parties.

(*p*) It is assumed in this Precedent that there is something to prevent the term from being enlarged, but that the liabilities of the lessees are insignificant; hence the term is assigned to the mortgagee. If only an undivided share is mortgaged, then Form No. 16 should be used.

E. F., of, &c. (hereinafter called the Mortgagee), of the other part (*Recite deed creating term of 1,000 years, conveyance of freeholds, and assignment of term of 1,000 years to Borrowers as tenants in common*):

Agreement  
for advance.

AND WHEREAS the Mortgagee has agreed to advance to the Borrowers the sum of £ — upon having the repayment thereof, with interest as hereinafter mentioned, secured to him in manner hereinafter appearing:

NOW THIS INDENTURE WITNESSETH as follows:—

Covenant by  
Borrowers to  
pay principal  
and interest.

1. IN pursuance of the said agreement and in consideration of the sum of £ — now paid by the Mortgagee to the Borrowers (the receipt whereof the Borrowers hereby acknowledge), the Borrowers hereby jointly and severally covenant with the Mortgagee (*Covenant to pay principal and interest, as in Forms Nos. 4 and 6*).

2. FOR the consideration aforesaid each of the Borrowers, as to his undivided moiety, As Beneficial Owner, hereby conveys and assigns unto the Mortgagee,

FIRST, ALL, &c. (*freehold parcels*);

SECONDLY, ALL, &c. (*leasehold premises*),

TO HOLD as to the said freehold hereditaments unto and To THE USE of the Mortgagee in fee simple, and as to the said leasehold hereditaments unto the Mortgagee for the residue of the said term of 1,000 years created therein as aforesaid:

Proviso for  
redemption.

PROVIDED ALWAYS (*Form No. 9, and continue*), the said freehold and leasehold hereditaments shall, at the request and cost of the Borrowers or the persons respectively deriving title under them, be respectively reconveyed and reassigned to them as tenants in common, or as they shall direct.

Covenant by  
Borrowers  
to insure  
against fire.

3. THE Borrowers hereby jointly and severally covenant with the Mortgagee that the Borrowers or the persons respectively deriving title under them will (*Covenant for insurance against fire, Form No. 19; add Forms Nos. 15 and 49 and other provisions, as required*).

IN WITNESS, &c.

## No. II.

MORTGAGE *in Fee by HUSBAND and WIFE, married before 1883, of FREEHOLDS belonging to WIFE, and not being her SEPARATE PROPERTY (q).*

THIS INDENTURE, made the — day of —, BETWEEN A. B., Parties, of, &c., and E. B., his wife (hereinafter called the Borrowers), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part:

WHEREAS the Borrowers are seised in fee simple in possession in right of the said E. B. of the hereditaments hereinafter described free from incumbrances: Recite title of wife.

AND WHEREAS the Mortgagee has agreed to advance to the Borrowers (*continue Form No. 2A, and substitute "Borrowers" for "Borrower" throughout the Precedent*): Agreement for loan.

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagee to the Borrowers (*the receipt, &c.*), the said E. B., As Beneficial Owner, with the concurrence of A. B., her husband, hereby conveys and disposes of and the said A. B., As Beneficial Owner, hereby conveys and confirms unto the Mortgagee Conveyance by husband and wife

ALL THOSE, &c. (*see Forms Sect. II. in Purchase Deeds, sup.*),

To HOLD unto and To THE USE of the Mortgagee in fee simple subject to the proviso for redemption hereinafter contained (that is to say):— to Mortgagee in fee.

2. PROVIDED ALWAYS (*Form No. 9, and continue*), the said hereditaments shall, at the request and cost of the person or persons making such payment, be reconveyed unto and To the Use of the said E. B. in fee simple. Proviso for redemption.

3. By way of further security the said A. B. hereby covenants to pay to the Mortgagee the said sum of £——, with interest Covenant by husband for

---

(q) See M. W. P. Act, 1882, ss. 1, 2. It should be ascertained that there is no covenant for the settlement of the wife's property. If the wife has any separate property the first clause should be a joint and several covenant to pay; see last Precedent.

payment of  
principal and  
interest.

thereon as aforesaid, on the said — day of — next, and also, so long after that day as any principal money remains due under these presents, to pay to him interest thereon at the rate aforesaid by equal half-yearly payments on the — day of — and the — day of — in every year.

Liability as  
between Mort-  
gagor and  
mortgaged  
property.

4. PROVIDED ALWAYS (*continue as in Form No. 37, saying, "the said A. B." instead of "the Borrower"*).

(*Add Forms Nos. 15 and 49 and such other provisions as may be required.*)

IN WITNESS, &c.

(*Memorandum of acknowledgment by E. B.; see Form No. 10, Sect. III., Purchase Deeds, p. 320, sup.*)

### No. III.

MORTGAGE *by* HUSBAND *of* his WIFE'S LEASEHOLDS,  
ACQUIRED *by* her, and her MARRIAGE *having taken place,*  
BEFORE 1883.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part :

Recital of  
Lease.

WHEREAS (*Recite Lease to E. F., afterwards the wife of A. B., as in Form No. 28, Purchase Deeds, p. 304, sup.*) :

Marriage.

AND WHEREAS the Borrower married the said E. F. on the — day of —, 1881, and no settlement or agreement for a settlement was made on their marriage or has been since made affecting the said leasehold premises :

Agreement  
for loan.

AND WHEREAS (*Form No. 2A*) :

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN pursuance, &c. (*Covenant by Borrower to pay principal money and interest, as in Forms Nos. 4 and 6*).

2. IN further pursuance, &c. (*Form No. 11, Sub-demise of Leaseholds by way of Mortgage*).

3. THE Borrower, &c. (*Form No. 11A, Trust of Principal Term*).

4. THE Mortgagee, &c. (*Form No. 11B, Power to appoint New Trustees*).

5. For the consideration, &c. (*Form No. 11c, Appointment of Attorney*).

6. PROVIDED, &c. (*Forms Nos. 9 and 9B, Proviso for Redemption*).

7. PROVIDED ALWAYS, that upon any sale, &c. (*Form No. 15*).

8. THE BORROWER, &c. (*Form No. 19, Covenant to Insure*).

9. (*Add Form No. 49 and special clauses, if required.*)

IN WITNESS, &c. (*r*).

#### NO. IV.

MORTGAGE *by* MARRIED WOMAN *of* FREEHOLDS *or* COPYHOLDS *or* LEASEHOLDS, *being her* SEPARATE PROPERTY *under the* MARRIED WOMEN'S PROPERTY ACT, 1882 (*s*).

THIS INDENTURE, made the — day of —, BETWEEN Parties. A. B., the wife of E. B., of, &c., to whom she was married after the 31st day of December, 1882 (*t*) (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part (*The rest of the deed will be in the same form as Precedents I., II. or IV. of Group A, or any other Precedent applicable to the case with the necessary change of gender*).

IN WITNESS, &c.

(*r*) As to the powers of a husband to settle the separate property of his wife, see, M. W. P. Act, 1907, s. 2.

(*s*) See Dissertation on Husband and Wife in Vol. II.

(*t*) If the marriage was before 1883, and the property was acquired after 1882, so as to come within the M. W. P. Act, 1882, the date of the marriage will be omitted in the description of the mortgagor, and recitals will be introduced showing the acquisition of the property since 1882.

GROUP C.—MORTGAGES UNDER THE SETTLED LAND ACTS OR  
UNDER A GENERAL POWER OF APPOINTMENT (*u*).

No. I.

MORTGAGE *of* FREEHOLDS *by* a TENANT *for* LIFE *under*  
SECTION 18 *of* the S. L. ACT, 1882, *to raise money*  
*required for* ENFRANCHISEMENT, EQUALITY *of* EXCHANGE,  
*or* PARTITION (*x*).

Parties. THIS INDENTURE. &c., BETWEEN A. B., of, &c. (*tenant for life*)  
(hereinafter called the Borrower), of the 1st part, M., of, &c., and  
N., of, &c. (hereinafter called the Trustees) (*y*), of the 2nd  
part, and C. D., of, &c. (hereinafter called the Mortgagee), of the  
3rd part :

Recital of  
Settlement. WHEREAS under an Indenture of Settlement (*continue as in*  
*Form No. 10, Sect. I., Purchase Deeds, p. 294, sup., saying “ the*  
*Borrower ” for “ the Vendor ”*) (*z*):

Agreement for  
advance. AND WHEREAS the Borrower, as tenant for life in possession

---

(*u*) For forms of conveyance under the S. L. Acts by trustees acting  
on behalf of infants, &c., see Purchase Deeds, Sect. I., Group E, p. 294, *sup.*,  
which may be adapted to the case of mortgages.

Mortgage  
under S. L.  
Act, 1882,  
s. 18. (*x*) The sum advanced is capital money, and must be paid to the trustees  
or into Court : S. L. Act, 1882, ss. 18, 22.

Costs. The mortgagee is not concerned to inquire whether the money is required  
or not: *ib.*, s. 40. S. 18 does not expressly authorise the raising of money  
for payment of the costs, but it is apprehended that such a power is implied,  
see, *Armstrong v. A.* (1874), L. R. 18 Eq. 541; 43 L. J. Ch. 719; *Nightingale*  
*v. Reynolds*, 1902, 2 Ch. at p. 131; 71 L. J. Ch. 586; aff. 1903, 2 Ch. 236; 72  
L. J. Ch. 564. At all events, the trustees can pay the costs out of capital  
money in their hands: S. L. Act, 1882, s. 21 (*x*). Under s. 47 the Court  
may direct a mortgage to be made for raising costs.

Purchase of  
reversion on  
a lease. It has been held (*Re Bruce*, 1905, 2 Ch. 372; 74 L. J. Ch. 578) that money  
may be raised under s. 18 to purchase a freehold reversion on a lease within  
s. 21 (*vi*).

Form of  
summons for  
payment into  
Court. For form of summons for payment into Court of money raised under s. 18,  
see, Rules under S. L. Act, 1882, Form XI.

As to raising money for the enfranchisement of copyholds, see, also the  
Copyhold Act, 1894, s. 36.

(*y*) The S. L. Act trustees must join to receive the money.

Variation  
where the  
mortgaged  
property is (*z*) If the mortgaged property is the subject-matter of the enfranchisement,  
exchange, or partition, the deed of even date of enfranchisement, exchange,  
or partition must be recited showing that the consideration for that deed was

under the recited Settlement, requires to raise the sum of £—— for the purpose of effecting an enfranchisement [*or an exchange, or a partition*] of certain hereditaments (other than the hereditaments hereinafter described) now subject to the limitations of the recited Settlement and the Mortgagee has agreed to advance that sum upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing :

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagee at the request of the Borrower to the Trustees as such Trustees as aforesaid (the receipt of which sum the Trustees hereby acknowledge), the Borrower, in exercise of the powers for this purpose conferred on him by the Settled Land Acts, 1882 to 1890, and of all other powers, and As Beneficial Owner, hereby conveys unto the Mortgagee

Conveyance by  
tenant for life.

ALL THOSE, &c. (*see Forms in Sect. II., Purchase Deeds*),

Parcels.

To HOLD unto and To THE USE of the Mortgagee in fee simple, discharged from all the limitations, trusts, powers and provisions of the recited Settlement and from all estates, interests and charges subsisting or to arise thereunder, but subject to the proviso for redemption hereinafter contained.

Habendum.

2. THE premises hereinbefore conveyed shall stand charged with the payment to the Mortgagee on the —— day of ——

Charge for  
fixing power of  
sale, &c.

paid by the trustees at the request of the tenant for life and the following recital substituted for the agreement for loan in the text :—

the subject-  
matter of the  
enfranchise-  
ment, ex-  
change, or  
partition.

AND WHEREAS the said sum of £—— expressed to be paid by the Trustees in the recited Indenture of even date herewith was advanced to them by the Mortgagee at the request of the Borrower upon an agreement between the Borrower and the Mortgagee that the repayment thereof, with interest thereon as hereinafter mentioned, should be secured to the Mortgagee in manner hereinafter appearing :

The operative part will commence with the following words :—

IN pursuance of the said agreement and in consideration of the sum of £—— so paid by the Mortgagee as aforesaid (the payment of which sum the Trustees hereby acknowledge), the Borrower, &c.

next of the said sum of £—, with interest thereon from the date hereof at the rate of £— per cent. per annum, and also so long as any principal money remains due under these presents after the said — day of — next with the payment to the Mortgagee of interest on the said sum at the rate aforesaid by equal half-yearly payments on the — day of — and the — day of — in every year (*a*).

Covenant by tenant for life to pay interest during his life.

3. THE Borrower hereby covenants with the Mortgagee that the Borrower will during his life (*b*) pay to the Mortgagee interest accruing during his life at the rate of £— per cent. per annum on the said sum of £—, or on so much thereof as shall for the time being remain unpaid, by equal half-yearly payments on the — day of — and the — day of — in every year, the first of such half-yearly payments to be made on the — day of — if the Borrower shall be then living.

Proviso for redemption.  
Covenant to insure against fire.

4. PROVIDED ALWAYS (*Form No. 12*).

5. THE Borrower hereby further covenants with the Mortgagee that the Borrower will during his life (*continue as in Form No. 19, and add special clauses as to reduction of interest, Forms No. 30 or No. 32, or otherwise, as required*).

6. (*Form No. 15 as to power of sale.*)

7. (*Form No. 45 or No. 46 as to leasing powers, as required.*)

8. (*Form No. 18, Covenant against registration.*)

Qualification of implied covenants for title (*c*).

9. PROVIDED ALWAYS, that so far as regards, &c. (*Form No. 1, Sect. III., Purchase Deeds, p. 314, sup.*).

10. (*Add Form No. 49 as to duties on land values.*)

Acknowledgment, &c.

11. THE Borrower hereby acknowledges the right of the Mortgagee to production of the recited Settlement [and of the documents mentioned in the — Schedule hereto] and to delivery of copies thereof, And hereby undertakes for the safe custody thereof.

IN WITNESS, &c.

(*Add schedules of documents, or otherwise, as required.*)

(*a*) If a covenant by the tenant for life for payment of principal and interest is required this clause will be omitted.

(*b*) Sometimes the mortgagor is required to enter into a full covenant for payment of principal and interest, see Forms 4 and 6; if so, this will come in clause 1, and Form No. 37 should be added.

(*c*) If the tenant for life is required to give full covenant for title, this clause should be omitted.

No. II.

MORTGAGE of FREEHOLDS and COPYHOLDS by a TENANT for LIFE under SECTION 11 of the S. L. ACT, 1890, to raise money required to pay off INCUMBRANCES on other parts of the SETTLED ESTATES (d).

THIS INDENTURE, &c. (*Parties and definitions as in last Precedent*): Parties.

WHEREAS under an Indenture of Settlement dated the — day of —, and made, &c., the freehold and copyhold hereditaments hereinafter described (with other hereditaments) now stand limited to the use of [*or in trust for*] the Borrower during his life without impeachment of waste, with remainders over, And the Trustees are the present Trustees of the said Settlement for all the purposes of the Settled Land Acts, 1882 to 1890: Recital of Settlement.

AND WHEREAS the Trustees were on the — day of — duly admitted to the said copyhold hereditaments to hold to them and their heirs at the will of the lord according to the custom of the Manor of —, in the County of —, of which the said hereditaments are parcel: Admission of Trustees to copyholds.

AND WHEREAS (*as in last Precedent, but saying, for the purpose of discharging incumbrances on hereditaments subject to the limitations of the recited Settlement (other than the hereditaments hereinafter described), and for payment of costs of the transaction (c)*), and the Mortgagee has, &c.: Agreement for advance.

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance, &c. (*continue witnessing part of last Precedent down to “acknowledge”*), the Borrower hereby covenants (*Covenant to pay principal and interest, Forms Nos. 4 and 6*). Covenant to pay (f).

(d) This section authorises the tenant for life to raise money for discharging incumbrances. This power is not confined to the case where an existing mortgagee gives notice requiring to be paid off: *Re Clifford*, 1902, 1 Ch. 87; 71 L. J. Ch. 10. As to the cases to which this section applies, see, *Wolst. Conv. Acts*, 9th ed., 447—448; also *Re Pizzi*, 1907, 1 Ch. 67; 76 L. J. Ch. 87. Mortgage under S. L. Act, 1890, s. 11.

(e) S. 11 expressly authorises the tenant for life to raise the amount necessary to pay the costs. If the same land is made subject to the new security, then the incumbrances paid off should be scheduled with any transfers of even date taken by the mortgagee. Variation if the land originally mortgaged is to be part of the security.

(f) It is assumed here that the tenant for life has agreed to give the

Conveyance of  
freeholds and  
copyholds (*g*).

2. FOR the consideration aforesaid the Borrower, in exercise of the power for this purpose conferred on him by the Settled Land Acts, 1882 to 1890, and of all other powers, and As Beneficial Owner (*h*), hereby conveys unto the Mortgagee

ALL AND SINGULAR the freehold and copyhold hereditaments situated in the County of —, and more particularly described in the first and second parts of the — Schedule hereto, and delineated on the plan drawn on these presents and thereon respectively coloured pink and blue,

To HOLD unto the Mortgagee and his heirs, As to the said freehold hereditaments, To THE USE of the Mortgagee in fee simple, and As to the said copyhold hereditaments, To THE USE of the Mortgagee, his heirs and assigns, for a customary estate of inheritance according to the custom of the said Manor of —, and subject to the rents, fines, heriots, suits and services therefor due and of right accustomed, And as to all the said hereditaments, discharged from all the limitations, trusts, powers and provisions of the recited Settlement and from all estates, interests and charges subsisting or to arise thereunder, But subject to the proviso for redemption hereinafter contained, and so that in the case of the said copyhold hereditaments these presents shall operate as a surrender of the same, To THE USE of the Mortgagee, his heirs and assigns, subject to a condition for making void such surrender corresponding to the proviso for redemption hereinafter contained (*i*).

Proviso for  
redemption.  
Covenant to  
insure.

3. PROVIDED ALWAYS (*Form No. 12*).

4. (*Form No. 19*; *add special clauses as to reduction of rate of interest, &c., as required.*)

Statutory  
effect of  
conveyance of  
copyholds.

covenant to pay principal as well as interest, *cf.* last Precedent; he may have been originally liable for the debts.

(*g*) See S. L. Act, 1882, s. 20 (1), (3), as to the copyholds. The deed must be entered on the court rolls, and it will then operate as a surrender on which the mortgagee may obtain admission if and when he requires it.

(*h*) As to the implied covenants for title in the case of copyholds, see, Conv. Act, 1881, s. 7 (5).

Form of  
admission.

(*i*) For a form of admittance pursuant to a conveyance under the S. L. Acts, see Purchase Deeds, Prec. V., Group E, p. 402, *sup.* If the mortgagee has not been admitted, then on redemption he can release the copyholds by deed and give a warrant to the steward to enter up satisfaction of the mortgage. If he has been admitted, he must surrender to the use of the then trustees of the settlement.

As to a release  
of the settled  
copyholds on  
redemption.

5. (*Form No. 37 as to liability of tenant for life.*)
  6. (*Form No. 15 as to power of sale.*)
  7. (*Form No. 18, Covenant against registration.*)
  8. (*Forms Nos. 45 or 46 and 48 as to leasing powers.*)
  9. (*Form No. 1, Sect. III., Purchase Deeds, p. 314, sup., qualification of implied covenants.*)
  10. (*Add Form No. 49 as to duties on land values.*)
  11. (*As in clause 10, last Precedent.*)
- IN WITNESS, &c.

Acknowledg-  
ment, &c.

(*Add schedules, as required.*)

### No. III.

MORTGAGE of FREEHOLDS and LEASEHOLDS by a TENANT FOR LIFE under SECTION 11 of the S. L. ACT, 1890, and the FINANCE ACT, 1894, for raising Money to pay ESTATE DUTY (j).

THIS INDENTURE, &c. (*Parties and definitions as in Precedent I. Parties of this Group*):

WHEREAS (*Recite Lease ; Settlement under which freeholds were limited to use of X. for life, remainder to use of his first and other sons in tail male, remainder to use of Borrower for life, remainders over ; appointment of Trustees for purposes of S. L. Acts ; assignment of leaseholds to Trustees on trusts corresponding to uses of freeholds ; death of X. without having had any issue male ; that the sum of £—— had become payable in respect of the property comprised in the Settlement for Estate Duty, including Settlement Estate Duty, on the death of X. (k)*):

AND WHEREAS the Borrower, as such tenant for life as aforesaid, requires to raise the said sum of £—— for discharging the said duty and the further sum of £—— for discharging the costs of

Agreement for  
advance.

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(j) The estate duty charge is automatic: *Lord Advocate v. Moray*, 1905, A. C. 531; 74 L. J. P. C. 122. The tenant for life is liable for the interest on the duty and cannot raise it by mortgage: *Re Howe's S. E.*, 1903, 2 Ch. 69; 72 L. J. Ch. 461.

(k) If the land is settled by Will, then recite the lease, the assignment thereof to the testator, his seisin of the freeholds, his Will giving first life estate to borrower in freeholds, with remainders over, and bequeathing leaseholds to trustees on corresponding trusts, appointment of S. L. Act trustees, death of testator, probate, assent by executors subject to payment of duties, and amount of duty.

Variation if  
land settled  
by a Will.

and incidental to these presents and the payment of the said duty, and the Mortgagee has at the request of the Borrower agreed to advance the aggregate sum of £—— upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing :

Of payment of  
interest on  
duty.

AND WHEREAS the Borrower has out of his own money paid all interest which has accrued in respect of the said duty :

Payment of  
duty.

AND WHEREAS the Mortgagee has by the direction of the Borrower and of the Trustees paid the said sum of £—— in discharge of the said duty (*l*) :

NOW THIS INDENTURE WITNESSETH as follows :—

Charge by  
tenant for life.

1. IN pursuance of the said agreement and in consideration of the sum of £—— so paid as aforesaid and of the sum of £—— now paid by the Mortgagee by the direction of the Borrower to the Trustees (the payment and receipt of which two sums the Trustees hereby acknowledge), the Borrower, in exercise of the powers for this purpose conferred on him by the Settled Land Acts, 1882 to 1890, and the Finance Act, 1894, and of all other powers, hereby charges the hereditaments hereinafter respectively conveyed and demised with the payment to the Mortgagee on the —— day of —— next of the said aggregate sum of £——, with interest, &c. (*continue as in clause 2, Precedent I., of this Group*).

Conveyance by  
tenant for life.

2. FOR the consideration aforesaid and in exercise of the said powers, the Borrower, As Beneficial Owner, hereby conveys unto the Mortgagee

ALL THOSE, &c. (*frecholds*),

TOGETHER with the benefit of the charge created by section nine of the Finance Act, 1894, by reason of the payment of the said duty, but so far only as such charge affects the hereditaments hereinbefore described,

TO HOLD, &c. (*as in clause 1, Precedent I., of this Group*).

Demise by  
tenant for life.

3. FOR the consideration aforesaid and in exercise of the said powers (*continue Form No. 11*).

Trust of prin-  
cipal term.

4. THE Trustees hereby agree that they and the persons deriving title under them will henceforth, &c. (*continue Form No. 11A*).

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(*l*) A banker's cheque can be made payable direct to the Inland Revenue.

5. (*Form No. 11B, substituting “the Trustees and the persons deriving title under them” for “the Borrower and the persons deriving title under him.”*) Power to appoint new Trustees.

6. PROVIDED ALWAYS (*Form No. 12, substituting “the premises hereinbefore respectively conveyed and demised” for “the premises hereinbefore conveyed” adding at the end “and so that on a surrender of the said leasehold hereditaments the term hereby created shall be merged”*). Proviso for redemption of freeholds and leaseholds.

(*Add as in clauses 3, 5, 6, 7, 8, 9, 10 and 11 of Precedent I. of this Group.*)

IN WITNESS, &c.

(*Add schedules as required.*)

#### NO. IV.

MORTGAGE of FREEHOLDS by TENANT for LIFE under SECTION 5 of S. L. ACT, 1882, by way of SUBSTITUTED SECURITY for OTHER HEREDITAMENTS released by the MORTGAGEE on a SALE (*m*).

THIS INDENTURE, made, &c. (*Parties and definitions as in Parties. Precedent I. of this Group (u)*):

WHEREAS by an Indenture of Mortgage dated the — day of —, and made, &c., the hereditaments therein mentioned were conveyed to the Mortgagee, in fee simple by way of mortgage for securing payment to him on the day therein mentioned and since passed of the principal sum of £—, with interest thereon at the rate of £4 per cent. per annum: Recital of Mortgage.

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(*m*) This section enables the tenant for life to transfer a charge to another part of the settled land on a sale, exchange, or partition. Substituted security under S. L. Act, 1882, s. 5.

With slight alterations of the recitals this Precedent is applicable to a similar case arising on an exchange or partition. Variations in case of exchanges and partitions.

Another mode is to include the whole transaction in one deed—the mortgagee joining to release the land or the undivided share comprised in his original security, and the land taken in exchange or severalty being, by the direction of the tenant for life, conveyed to the mortgagee in fee, subject to the like right of redemption by the persons entitled under the settlement: S. L. Act, 1882, s. 24 (4), (5), (6).

(*u*) The trustees are merely formal parties, and as no money is passing need not execute.

Recital of  
Settlement.

AND WHEREAS by an Indenture of Settlement dated the —— day of ——, and made, &c., the hereditaments comprised in the recited Mortgage were (subject to that Mortgage) with the hereditaments hereinafter described limited to uses under which the Borrower is now tenant for life in possession, with remainders over, And the Trustees are the present Trustees of the said Settlement for all the purposes of the Settled Land Acts, 1882 to 1890 :

Recital of sale  
by tenant for  
life of heredita-  
ments com-  
prised in the  
Mortgage with  
the concu-  
rence of the  
Mortgagee.

AND WHEREAS the Borrower, as tenant for life in possession under the recited Settlement, has, with the concurrence of the Mortgagee, sold the hereditaments comprised in the recited Mortgage for the sum of £——, and by an Indenture of Conveyance bearing even date with but executed before these presents and made, &c., the same hereditaments have been conveyed and released unto the said —— (*Purchaser*) in fee simple discharged from the recited Mortgage and all principal money and interest thereby secured :

State of mort-  
gage debt.

AND WHEREAS the said principal sum of £——, with interest thereon from the —— day of ——, is still owing to the Mortgagee upon the security of the recited Mortgage :

Agreement for  
substituted  
security.

AND WHEREAS the Mortgagee concurred in the said Conveyance in consideration of having a substituted security made to him in manner hereinafter appearing for payment of the said sum of £—— and the interest due and to become due thereon :

NOW THIS INDENTURE WITNESSETH as follows:—

Charge of  
principal and  
interest.

1. In pursuance of the said agreement and in consideration of the premises, the Borrower, in exercise of the power for this purpose conferred on him by the Settled Land Acts, 1882 to 1890, and of all other powers, hereby charges the hereditaments hereinafter described with the payment to the Mortgagee of the said sum of £—— and all interest due and to become due thereon at the rate of £— per cent. per annum on the —— day of —— next (*the first day for payment of interest*) in substitution for and in exoneration of the hereditaments so sold as aforesaid, And also, so long as any principal money remains due under these presents after the —— day of —— next, with the payment to the Mortgagee of interest thereon at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

Conveyance  
and other  
provisions.

2. For the consideration aforesaid the Borrower, in exercise, &c. (*continue as in clause 1, Precedent I., of this Group, and then go to*

*clause 3 and continue to the end of that Precedent. The Borrower will covenant to pay interest as from the — day of — (the day down to which interest has been paid). The days for payment of interest and that in the prorisio for redemption will correspond with those in the original Mortgage).*

IN WITNESS, &c.

No. V.

MORTGAGE of FREEHOLDS by a TENANT for LIFE under SECTION 63 of the S. L. ACT, 1882, pursuant to an ORDER of the COURT under SECTION 7 of the S. L. ACT, 1884 (o).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*tenant for life of proceeds of sale*) (hereinafter called the Borrower), of the 1st part, M., of, &c. and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c. (hereinafter called the Mortgagee), of the 3rd part:

Parties.

WHEREAS X. Y., of, &c., being at his death seised of the hereditaments hereinafter described in fee simple in possession free from incumbrances, duly made his Will dated the — day of —, and thereby, after appointing the Trustees to be his executors and trustees, devised to them all his real estate (including the hereditaments hereinafter described) Upon trust to sell the same and to stand possessed of the net proceeds of such sale on trusts for investment as therein mentioned and to pay the annual income thereof and also the rents and profits of the premises until sale to the Borrower during his life, with certain trusts over (p) (*Recite death of testator and probate*):

Recital of Will devising land on trust for sale.

(o) The S. L. Act powers are not exercisable by a tenant for life of the proceeds or of the rents and profits until sale under a settlement by way of trust for sale except under an order: S. L. Act, 1884, s. 7. The order may be general or for a specific purpose. While the order is in force the powers of the trustees are in abeyance as respects the powers conferred by the order.

Effect of order under S. L. Act, 1884, s. 7.

(p) If the land is conveyed to trustees on trust for sale, this conveyance only should be recited and referred to in place of the Will. The settlement of the proceeds of sale is kept off the title by S. L. Act, 1884, s. 7, for the order under that section is conclusive evidence as to the proper person to exercise the powers.

Variation where land conveyed on trust for sale.

Recital of  
Order.

AND WHEREAS by an Order of the Chancery Division of the High Court of Justice, made on the — day of — by the Honourable Mr. Justice —, In the matter of the — Estate, situated, &c., settled by the Will of X. Y., and In the matter of the Settled Land Acts, 1882 to 1890, the Borrower was authorised to exercise in respect of the said hereditaments all the powers (other than the powers of sale and exchange) which are by the said Acts conferred on a tenant for life in possession of settled land (q) :

Agreement for  
advance.

AND WHEREAS the Borrower, in exercise of the powers conferred on him by the recited Order and the said Acts (*continue as in Precedent I. of this Group, or state any other authorised purpose for which the money is raised*) :

NOW THIS INDENTURE WITNESSETH as follows :—

Charge.

Covenant to  
pay interest.  
Proviso for  
redemption.

1. In pursuance, &c. (*continue as in clause 1, Precedent I., of this Group, but say after the words "1882 to 1890" and of the recited Order, and after the words "in fee simple" say "discharged from all the trusts, powers and provisions of the recited Will"*).

2. (*As in clause 2, Precedent I.*)

3. (*As in clause 3, ditto.*)

4. (*Form No. 12; substitute "recited Will" for "recited settlement," and substitute "to the use of the trustees in fee simple" for "to the uses."*)

5, 6, 7, 8, 9 and 10. (*As in Precedent I. of this Group.*)

11. (*Ditto, except that the Trustees, if, as is probable, they hold the deeds, will give an acknowledgment only.*)

IN WITNESS, &c. (r).

(*Add schedules as required.*)

Registration of  
order under  
S. L. Act,  
1884, s. 7, as a  
*lis pendens*.

Express  
powers by  
reference to  
S. L. Acts.

(q) It is assumed in the text that a general order has been made. The order may be registered against the trustees as a *lis pendens*: S. L. Act, 1884, s. 7 (v.); but a person dealing with the trustees is not affected by the order until it is registered: *ib.* (vi.).

(r) If the trustees, as is now usual in the case of a trust for sale, are expressly given the statutory powers of a tenant for life, then they will mortgage the land without an order of the Court. See next Group of Precedents.

## No. VI.

MORTGAGE *under a General Power of Appointment.*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. B., of, &c. (hereinafter called the Borrowers), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part :

Parties.

WHEREAS under an Indenture of Settlement dated the — day of —, and made, &c., the hereditaments hereinafter described (with other hereditaments) now stand limited to such uses as the Borrowers shall by deed jointly appoint, and in default of and subject to any such appointment To the Uses therein mentioned :

Recital of Settlement.

AND WHEREAS (*Form No. 2A*) :

Agreement for advance.

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of the said agreement, &c. (*Form No. 3*), “ the Borrowers hereby jointly and severally covenant ” (*continue Forms Nos. 4 and 6*).

Covenant for payment of principal and interest.

2. For the consideration aforesaid the Borrowers, in exercise of the powers for this purpose conferred on them by the recited Settlement and of all other powers, and As Beneficial Owners, hereby appoint that

Appointment.

ALL THOSE, &c., shall henceforth remain and be

Parcels.

To THE USE of the Mortgagees in fee simple, but subject to the proviso for redemption following (that is to say):—

3. PROVIDED ALWAYS (*Form No. 12*).

(*Add other clauses as required ; see Precedent 1. of Group A, p. 808, sup. ; also Form No. 37, as to liability between Borrowers and the mortgaged property.*)

Proviso for redemption.

IN WITNESS, &c.

GROUP D.—MORTGAGES BY TRUSTEES AND PERSONAL  
REPRESENTATIVES.

No. I.

MORTGAGE *by the TRUSTEES of a SETTLEMENT of real estate to raise ESTATE DUTY under section 9 of the FINANCE ACT, 1894, and under S. L. ACT, 1890, section 11, during a minority (s).*

Parties,

THIS INDENTURE, made, &c., BETWEEN E. F., of, &c., and G. H., of, &c. (hereinafter called the Trustees), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part: (*Recite Settlement limiting the settled hereditaments to H. B. for life, with remainder to his sons successively in tail, and under which the Trustees are trustees of the Settlement for the purposes of the Settled Land Acts, 1882 to 1890, and of section 42 of the*

Recital of  
Settlement.

Mortgage  
under Fin.  
Act, 1894, to  
raise estate  
duty.

(s) If the tenant for life is of full age he will raise the money, see, Prec. III., Group C, p. 847, *sup.* Under the Fin. Act, 1894, s. 8 (4), the persons accountable for estate duty include every person in whom the management of the property is vested, which in the case of an infant tenant in tail would be the trustees of the settlement under the Conv. Act, 1881, s. 42. The executors of the deceased may at the request of the persons accountable pay the duty. S. 9 (5) authorises every person authorised or required to pay the duty to raise the amount with interest and expenses by mortgage. In the case of settled property, the trustees should raise the money themselves, if the executors have assented to the devise.

As regards property vested in the executors, they can raise the duty by mortgage under their ordinary powers of administration, and it is not necessary to specify the purpose for which the money is required, see, Prec. V. of this Group, p. 862, *inf.* The charge is automatic, see, *Lord Advocate v. Countess Moray*, 1905, A. C. 531; 74 L. J. P. C. 122.

Where a settlement contains a covenant for the payment of a principal sum, the executors of the covenantor, and not the settlement trustees, are liable for the estate duty in respect of the sum: *Re Gray*, 1896, 1 Ch. 620; 65 L. J. Ch. 462; see also *Re Hackett*, 1907, 1 Ch. 385; 76 L. J. Ch. 249.

Fin. (1909-10)  
Act, 1910,  
s. 56.

The Fin. (1909-10) Act, 1910, s. 56, enables land to be given in lieu of money for estate duty. It is conceived that trustees should not avail themselves of the provision without the consent of all the beneficiaries. Land given under s. 56 is to be dealt with as Parliament determines, and the part given might be used in such a way as to depreciate the rest of the estate. Conveyances to the Commissioners are free of stamp duty.

*Conveyancing and Law of Property Act, 1881—death of H. B., leaving A. B., eldest son, an infant :)*

AND WHEREAS by reason of the minority of the said A. B. the Trustees are the persons in whom the statutory powers of a tenant for life and the management of the settled hereditaments are vested, and they are accountable for the estate duty [including settlement estate duty] which became payable in respect of the said hereditaments on the death of the said H. B. :

Agreement by Trustees to borrow money on mortgage to pay estate duty and expenses.

AND WHEREAS the said duties [duty] (t) amount[s] to £—:

AND WHEREAS the Trustees have paid all the interest which has accrued in respect of the said duties [duty] out of the income arising under the recited Settlement and are desirous of raising the sum of £—, and also the further sum of £—, for expenses incurred by them in respect of the said duties [duty] (making the aggregate sum of £—) by a mortgage of the hereditaments hereinafter described, being part of the settled hereditaments, and they have accordingly applied to the Mortgagee to advance the same, which he has agreed to do upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing :

Payment of interest and agreement for advance.

AND WHEREAS the Mortgagee has on or before the execution of these presents at the request of the Trustees paid the said sum of £— in discharging the said duties [duty] :

Payment of duty.

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the payment of the said sum of £—, and of the further sum of £— now paid by the Mortgagee to the Trustees as such Trustees as aforesaid (the payment and receipt of which two sums the Trustees hereby acknowledge), the Trustees, in exercise of the powers for this purpose conferred on them by the Settled Land Acts, 1882 to 1890, and the Finance Act, 1894, and of all other powers (u), hereby charge the hereditaments hereinafter described with the payment to the Mortgagee on the — day of — next of the said aggregate sum of £—, with interest thereon from the date hereof at the rate of £— per cent. per annum :

Charge by Trustees.

(t) The interest on the duty cannot be raised on the land, as it is payable out of income: *Re Earl Howe's S. E.*, 1903, 2 Ch. 69; 72 L. J. Ch. 461.

(u) See S. L. Act, 1890, s. 11, under which the duty can be raised: *Wolst. Conv. Acts*, 9th ed., 447—448; *Proc. II.*, Group C, p. 845, *sup.*

AND ALSO, so long as any principal money remains owing under these presents after the said — day of — next, with the payment to the Mortgagee of interest thereon at the rate aforesaid by equal half-yearly payments on the — day of — and the — day of — in every year.

Conveyance.

2. For the consideration aforesaid and in further exercise of the said powers the Trustees, As Trustees, hereby convey unto the Mortgagee

Parcels.

ALL THOSE, &c. (*see Forms in Sect. II., Purchase Deeds*),

TOGETHER with the benefit of the charge created by section nine of the Finance Act, 1894, by reason of the payment of the said duty, but so far only as such charge affects the hereditaments hereinbefore described,

Habendum.

TO HOLD unto and TO THE USE of the Mortgagee in fee simple, discharged from all the limitations, trusts, powers and provisions of the recited Settlement and from all estates, interests and charges subsisting or to arise thereunder, but subject to the proviso for redemption hereinafter contained (that is to say):—

Proviso for redemption.

3. PROVIDED ALWAYS (*Form No. 12*) (*r*).

(*Add Forms Nos. 15, 18 and 49 and other clauses as required, also acknowledgment of right to production of Settlement and other documents, Form No. 6, Sect. III., Purchase Deeds, p. 317, sup.*)

IN WITNESS, &c.

(*Add schedules, if required.*)

## No. H.

MORTGAGE under the TRUSTS of a TERM for SECURING  
younger CHILDREN'S PORTIONS, where neither the POR-  
TIONISTS nor the FREEHOLDER CONCUR (*r*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*trustees of term for securing portions*) (hereinafter called the Trustees), of the one part, and E. F., of, &c. (hereinafter called the Mortgagee), of the other part:

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(*r*) This proviso is for redemption by the persons interested under the settlement; it does not impose any liability on the trustees. In this case the trustees are acting on behalf of the infant under S. L. Act, 1882, s. 60.

Mortgage of portions term.

(*r*) On a mortgage of land under the trusts of a term to raise portions for younger children, it is not necessary to make the portionists parties,

WHEREAS (*Recite Settlement whereby certain hereditaments were conveyed to use of husband for life, remainder to uses to secure jointure for wife, since deceased, remainder to the Trustees for 1,000 years, and subject thereto to use of the sons successively in tail—trusts of term of 1,000 years to raise by mortgage £4,000 for younger children's portions if there were not more than four such children*) :

Recital of Settlement.

AND WHEREAS the said (*husband*) died on the — day of — without having exercised the power of appointment conferred on him by the recited Settlement as aforesaid in respect of the said sum of £4,000 :

Death of husband without having executed power.

AND WHEREAS there are four younger children of the said marriage, and each of them has attained the age of twenty-one years, and accordingly the said sum of £4,000 is now payable to and divisible among such younger children equally :

That there are four younger children who have attained vested interests in their portions.

AND WHEREAS no part of the said sum of £4,000 has yet been raised :

AND WHEREAS the Trustees, pursuant to the trust for this purpose contained in the recited Settlement, have applied to the Mortgagee to advance to them the sum of £4,000 for the purpose of satisfying the said portions, together with the sum of £—— for the costs and expenses of and incidental to the raising of the said portions, making together the aggregate sum of £——, which the Mortgagee has agreed to do upon having the repayment thereof, with interest as hereinafter mentioned secured in manner hereinafter appearing :

Agreement to mortgage to raise same.

NOW THIS INDENTURE WITNESSETH as follows :—

Assignment.

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagee to the Trustees

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as the trustees can give a valid receipt for the money ; but if their concurrence can be readily obtained, it may be desirable to obtain it.

Where the tenant of the freehold is *sui juris*, he generally consents to join in the mortgage, and to covenant either for payment of the principal and interest, or of the interest only, by way of collateral security ; but if he is a minor, or refuses to join, the mortgagee must remain satisfied with the security of the land.

Where some of the younger children are infants and money is raised for the portions of those who have attained full age, it is desirable to only include part of the land subject to the term in the first mortgage and to mortgage the remainder when the other children's portions become raisable.

for the purpose aforesaid (*the receipt, &c.*), the Trustees, As Trustees, hereby assign unto the Mortgagee

ALL, &c. (*parcels*),

Habendum.

To HOLD unto the Mortgagee for the residue of the said term of 1,000 years created by the recited Settlement without impeachment for waste.

Charge by Trustees.

2. THE Trustees hereby charge the premises hereinbefore assigned with the payment, &c. (*continue as in clause 1 of last Precedent*).

Proviso for redemption.

3. PROVIDED ALWAYS, that on payment on the — day of — next by the persons deriving title under the recited Settlement to the Mortgagee or the persons deriving title under him of the sum of £—, with interest thereon at the rate of £— per cent. per annum, from the date of these presents, the premises hereinbefore assigned shall at the request and cost of such persons be duly surrendered so as to merge in the inheritance.

(*Add Forms Nos. 15 and 49 and other special clauses as required (y).*)

IN WITNESS, &c.

### No. III.

MORTGAGE *by* TRUSTEES *of a* TERM *for* RAISING PORTIONS *with the CONCURRENCE of the* PORTIONISTS, *and also of the* TENANT FOR LIFE, *under a re-settlement of the estates, who* COVENANTS *to* KEEP DOWN *the* interest.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Trustees), of the 1st part, G. Y., of, &c. (*tenant for life*), of the 2nd part, I. Y., of, &c., L. Y., of, &c., and N. Y., of, &c. (hereinafter called the

Custody of deeds.

(*y*) The settlement and other deeds will probably be in the custody of the tenant for life, and the mortgagee will generally be able to obtain from him under a 6d. stamp a separate acknowledgment, &c., of the mortgagee's right to production.

Priority of portions term mortgage.

When a portions term has been assigned by way of mortgage it becomes paramount to the settlement and cannot be overreached under S. L. Act, 1882, s. 20. If the tenant for life lends the money, a clause to meet this can be added, see note to Prec. IV. of this Group, *inf.*

Portionists), of the 3rd part, and E. F., of, &c. (hereinafter called the Mortgagee), of the 4th part (*Recite Settlement whereby estates were limited to use of X. Y. for life, with remainder that Z. Y. should receive a jointure, with remainder to the Trustees for 1,000 years, upon trust to raise £10,000 as portions for younger children, and also the costs of raising the same, with remainder to use of first and other sons of X. Y. and Z. Y. in tail male—that there were issue of their marriage G. Y., the eldest son, and the Portionists, younger children—that G. Y. attained twenty-one, and re-settlement of estates, whereby G. Y.'s estate tail is cut down to an estate for life, with remainders over:—death of X. Y.—that Portionists attained twenty-one in lifetime of X. Y.*) :

Recitals.

AND WHEREAS the Portionists, having required the Trustees to raise and pay to them the sum of £10,000 by the recited Settlement directed to be raised for the portions of younger children as aforesaid, the Trustees have applied to the Mortgagee to advance the said sum of £10,000 for the purpose aforesaid, and also the further sum of £—— for the purpose of paying the costs of and incidental to raising the said portions, which the Mortgagee has agreed to do, upon having the repayment of the said sums of £10,000 and £—— (making together the aggregate sum of £——), with interest thereon as hereinafter mentioned, secured by an assignment, by way of mortgage, of the hereditaments comprised in the said term of 1,000 years, and upon having the interest thereon further secured by the covenant of the said G. Y. in manner hereinafter appearing :

Agreement for advance.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagee to the Trustees for the purposes aforesaid, with the consent of the said G. Y. and the Portionists (*the receipt, &c.*), the Trustees, As Trustees, hereby assign [and the said G. Y., As Beneficial Owner, hereby confirms] unto the Mortgagee

Assignment.

ALL, &c. (*See Forms in Sect. II., Purchase Deeds*),

To HOLD unto the Mortgagee for the residue of the said term of 1,000 years created by the recited Settlement, subject to the yearly rent-charge of £—— thereby limited to the said Z. Y. during her life as aforesaid, and to the powers and remedies for enforcing payment thereof.

Parcels.

2. (*Charge by the Trustees, as in clause 2 of last Precedent.*)

3. (*Proviso for redemption, as in last Precedent, referring to the Resettlement.*)

Covenant by  
tenant for life  
to keep down  
the interest.

4. THE said G. Y. hereby covenants with the Mortgagee that the said G. Y. will during his life pay the interest at the rate aforesaid on the said principal sum of £——, or on so much thereof as shall for the time being remain owing on the security of these presents, by equal half-yearly payments on the days aforesaid.

5 AND 6. (*Add Forms Nos. 15 and 49 and other special clauses as required.*)

7. (*Qualification of G. Y.'s covenants for title, Form. No. 1, Sect. III., Purchase Deeds, p. 314, sup.*)

8. (*Acknowledgment and undertaking by G. Y. as to Deeds.*)

IN WITNESS, &c.

(*Add schedules, if required.*)

#### No. IV.

MORTGAGE *by TRUSTEES of a TERM, with the CONCURRENCE of the TENANT FOR LIFE, for the purpose of RAISING a PART of the EXPECTANT PORTION of a YOUNGER SON for his ADVANCEMENT.*

Parties.

Recite Settlement.

THIS INDENTURE, made, &c. BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Trustees), of the 1st part, E. F., of, &c. (*tenant for life*), of the 2nd part, and G. H., of, &c. (hereinafter called the Mortgagee), of the 3rd part (*Recite Settlement whereby estates were limited to E. F. for life, with remainder to uses, to secure jointure to wife, with remainder to the Trustees for term of 1,000 years upon trust for raising portions for younger children after the death of E. F., or during his life with his consent in writing, and power for the Trustees, with consent of E. F., to raise a moiety of the expectant portion of any child for his advancement*):

Death of  
settlor's wife.

AND WHEREAS the said —, the wife of the said E. F., died on the — day of — :

Issue of  
marriage.

AND WHEREAS there are issue of the said E. F. by the said — (*his wife*) L. F., their eldest son, and three younger sons and two daughters, all of whom are under the age of twenty-one years:

AND WHEREAS M. F. (who was born on the — day of —) is one of such younger sons :

AND WHEREAS the Trustees, with the consent of the said E. F., are desirous of raising the sum of £— for the advancement and benefit of the said M. F. under the aforesaid power together with the sum of £— for costs of and incidental to the raising of the same (making together the aggregate sum of £—), and they have requested the Mortgagee to advance the same, which he has agreed to do upon having the repayment thereof, with interest as hereinafter mentioned, secured to him in manner hereinafter appearing :

That tenant for life is desirous of raising money for advancement of younger son. Agreement for advance.

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £— now paid by the Mortgagee to the Trustees, with the consent of the said E. F., and which sum of £— is intended to be applied by the Trustees for the advancement of the said M. F. under the aforesaid power (*the receipt, &c.*), the Trustees, As Trustees, hereby bargain, sell and demise unto the Mortgagee

Subdemise of part of land comprised in term.

ALL AND SINGULAR the hereditaments described in the Schedule hereto,

To HOLD unto the Mortgagee for the residue of the said term of 1,000 years from the death of the said E. F., created by the recited Settlement (except the last ten days of the said term), without impeachment of waste.

2. For the consideration aforesaid, the said E. F., As Beneficial Owner, hereby demises unto the Mortgagee

Demise by tenant for life.

ALL AND SINGULAR the hereditaments described in the Schedule hereto,

To HOLD unto the Mortgagee for the term of ninety-nine years from the date of these presents, if the said E. F. shall so long live, without impeachment of waste.

3. PROVIDED ALWAYS, that on payment by the persons deriving title under the recited Settlement on the — day of— next to the Mortgagee or the persons deriving title under him of the sum of £—, with interest thereon at the rate of £— per cent. per annum from the date of these presents, the several terms hereby demised shall, at the request and cost of such persons, be duly surrendered so as to merge.

Proviso for redemption.

Covenant by  
tenant for life  
to pay prin-  
cipal and  
interest.

Declaration as  
to order of  
liability.

4. (*Covenant by E. F. to pay principal and interest, Forms Nos. 4 and 6.*)

5. PROVIDED that as between the said E. F. on the one hand and the hereditaments hereby demised on the other hand the said E. F., and his estate and effects, shall be liable during his life to keep down the interest on the said principal sum of £—— in exoneration of the said hereditaments, and the said hereditaments shall be charged with and liable to the payment of the said principal sum of £—— in exoneration of the said E. F. and his estate and effects: But this provision shall not affect the right of the Mortgagee to resort to his several securities in such order and manner as he shall think fit.

6. (*Add Forms Nos. 15 and 49, also acknowledgment and undertaking by E. F. as to documents, and other special clauses as required (z).*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Particulars of hereditaments demised.

#### No. V.

MORTGAGE of FREEHOLDS by PERSONAL REPRESENTATIVES  
to raise money for payment of EXPENSES in connexion  
with their TESTATOR'S ESTATE. VARIATIONS where  
LEASEHOLDS are mortgaged (a).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D.,  
of, &c. (*personal representatives*) (hereinafter called the Borrowers),

S. L. Act  
overreaching  
clause.

(z) The following clause may be added if agreed to by the mortgagee and notice is given to the S. L. Act trustees:—

“Nothing herein contained shall prejudice or affect the powers conferred by the Settled Land Acts, 1882 to 1890, or any Act amending the same, on the said E. F. in reference to the premises hereby demised, and such powers may be exercised without any further consent by the Mortgagee or the persons deriving title under him, and in like manner in all respects as if the terms hereby created had been limited by the recited Settlement, nor shall it be necessary to obtain the appointment of trustees of any compound settlement consisting of the recited Settlement and these presents.”

Estate duty  
raisable under

(a) The general power conferred on personal representatives by Part I. of the L. T. Act, 1897 (see *Re Hadley*, 1909, 1 Ch. at p. 32; 78 L. J. Ch. 254),

of the one part, and E. F., of, &c. (hereinafter called the Mortgagee), of the other part :

[WHEREAS (*Recite Lease to X. Y., as in Form No. 28, Purchase Deeds, p. 304, sup.*):] [Variation for leaseholds.]

[AND] WHEREAS [the said] X. Y., being at his death seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described (*b*), died on the — day of —, having by his Will dated the — day of — appointed the Borrowers (*c*) to be his executors, who on the — day of — duly proved the same at the — Probate Registry [*or if X. Y. died intestate, substitute for the words from “having” to “Registry”* intestate and Letters of Administration to his estate and effects were on the — day of — duly granted out of the — Probate Registry to the Borrowers]:] Seisin of testator, his death, and title of Borrowers.  
Variations for leaseholds.  
[Variation where intestacy.]

AND WHEREAS the Borrowers require the sum of £— for purposes (*d*) connected with the administration of the estate of the said X. Y., and the Mortgagee has agreed to advance that sum upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing: Agreement for advance.

to deal with the testator's real estate includes, it seems, the power conferred by the Fin. Act, 1894, s. 9 (5), to raise money for estate duty in all cases where property is vested in them as personal representatives. If the mortgage is taken in this form the mortgagee will require evidence that the duty on the freeholds has been or will be paid. Where, however, land is devised in settlement (not on trust for sale), the practice is for the executors to assent to the devise subject to the payment of the death duties and for the tenant for life to raise the money, see last Group of Precedents. L. T. Act, 1897, as well as under Fin. Act, 1894.

(*b*) In the case of leaseholds the words in square brackets will be used and the recital of seisin omitted. Executors and administrators can mortgage to pay debts: *Re Morgan* (1881), 18 Ch. D. at p. 98; 50 L. J. Ch. 834, see, also *Re Whistler* (1887), 35 Ch. D. 561; 56 L. J. Ch. 827; *Re Verrell*, 1903, 1 Ch. 65; 72 L. J. Ch. 44. They are presumed to be acting in the discharge of their duties: *Re Venn and Furze*, 1894, 2 Ch. 101; 63 L. J. Ch. 303; *Re Henson*, 1908, 2 Ch. 356; 77 L. J. Ch. 598. Trustees' power to mortgage leaseholds.

(*c*) All the executors who have not renounced probate or disclaimed the trusts must join: *Re Pawley*, 1900, 1 Ch. 58; 69 L. J. Ch. 6; except special executors of foreign property: *Re Cohen and L. C. C.*, 1902, 1 Ch. 187; 71 L. J. Ch. 164.

(*d*) The purposes need not be mentioned. The mortgagee is not concerned to inquire whether the debts, &c., have been discharged or not, but would not be safe in advancing the money if he had express notice that the estate had been cleared.

NOW THIS INDENTURE WITNESSETH as follows:—

Conveyance or  
assignment by  
Borrowers.

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagee to the Borrowers (*the receipt, &c.*), the Borrowers, As Personal Representatives of the said X. Y., deceased, hereby convey [assign] unto the Mortgagee

Parcels.

ALL, &c. [the premises comprised in and demised by the recited Lease (*c*)],

Habendum.

To HOLD unto and To THE USE of the Mortgagee in fee simple [unto the Mortgagee for the residue of the term granted by the recited Lease], discharged from all the trusts, powers and provisions of the recited Will, but subject to the proviso for redemption hereinafter contained (that is to say):—

Proviso for  
redemption.

2. PROVIDED ALWAYS, that on payment on the —— day of —— next by the Borrowers or other the personal representatives for the time being of the said X. Y., or the persons for the time being entitled to the equity of redemption in the premises, to the Mortgagee, or the persons deriving title under him, of the sum of £——, with interest thereon at the rate of £— per cent. per annum from the date hereof, the premises shall, at the request and cost of the person or persons making such payment, be duly reconveyed [reassigned] to him or them.

Charge of  
principal and  
interest on the  
property  
conveyed.

3. PROVIDED FURTHER, that the premises hereby conveyed [assigned] shall stand charged with the payment to the Mortgagee on the said —— day of ——, 19——, of the said sum of £——, with interest thereon from the date hereof, at the said rate of £— per cent. per annum. AND ALSO, so long as any principal money remains due under these presents after the said —— day of ——, 19——, with the payment to the Mortgagee of interest thereon at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

Clause limiting  
amount of fire  
insurance (*f*).

4. It is hereby declared that the amount of the insurance of buildings upon the said hereditaments against loss or damage

---

(*c*) If the mortgage is to be by sub-demise, then Forms Nos. 11, 11A, and 11B should be used. The appointment of an attorney (Form No. 11c) might be held to be invalid.

Fire insurance  
in mortgage by  
personal repre-  
sentatives.

(*f*) See Conv. Act, 1881, ss. 19 (1) (ii.) and 23. This clause is not required if the parties are satisfied with the two-thirds limit fixed by s. 23, or if there are no buildings requiring insurance.

by fire which may be effected by the Mortgagee or the persons deriving title under him under the statutory power shall not exceed the sum of £——, *or, in the case of Leaseholds*, the sum required to satisfy the covenant for insurance contained in the recited Lease.

(Add Forms Nos. 15, 49 and 18, and other special clauses, if required.)

IN WITNESS, &c.

## GROUP E.—MORTGAGES BY COMPANIES AND PUBLIC BODIES.

### No. I.

DEED *by a LIMITED COMPANY in the nature of a DEBENTURE charging the UNDERTAKING and all the PROPERTY, present and future, of the COMPANY with the repayment of a LOAN (g).*

THE — Company, Limited, whose registered office is at — (hereinafter called the Company), hereby acknowledge that they have this — day of — received the sum of £—— from

Company  
acknowledge  
receipt of

(g) This and the next Precedent are intended to meet a case where a company wishes to borrow money on the security of all its property consisting of land and also of personal chattels. The debenture of an incorporated company is excepted from the operation of the Bills of Sale Act, 1882, by s. 17 (the exemption applies to Guernsey: *Clark v. Balm, &c. Co.*, 1908, 1 K. B. 667; 77 L. J. K. B. 369); a charge by an incorporated company on personal chattels does not require to be registered under the Bills of Sale Act, 1878: *Re Standard Co.*, 1891, 1 Ch. 627; 60 L. J. Ch. 292; but the exemption does not apply to all corporations: *Gl. N. Ry. Co. v. Coal Co-operative Socy.*, 1896, 1 Ch. at p. 197; 65 L. J. Ch. 214. By the above Precedent the debenture is made a floating security on all the company's property, which would include personal chattels, and by the next Precedent the land of the company is mortgaged to the lender by way of further security. The company will, notwithstanding the debenture, be at liberty to dispose of their property (other than the land included in the mortgage) in the ordinary course of their business, and the debenture will attach only on the assets of the company existing at the time when a receiver is appointed or a winding-up takes place: *Re Florence Land Co.* (1875), 10 Ch. D. 530; 48 L. J. Ch. 137; *Re Colonial Trusts Corpn.* (1880), 15 Ch. D. 468, and see, *Illingworth v. Houldsworth*, 1904, A. C. 355; 73 L. J. Ch. 739.

Effect of  
debenture on  
company's  
undertaking.

Although a debenture is generally one of a series, this is not necessary: *Ley v. Abercorris Slate Co.* (1888), 37 Ch. D. at p. 264; 57 L. J. Ch. 203;

money lent  
and covenant  
to repay it.

A. B., of, &c. (hereinafter called the Mortgagee), by way of loan :

AND the Company hereby covenant with the Mortgagee to pay to him on the — day of — next the sum of £—, with interest thereon in the meantime at the rate of £— per cent. per annum :

AND ALSO, so long as the said principal sum shall remain unpaid, to pay to the Mortgagee interest thereon at the rate aforesaid by equal half-yearly payments on the — day of — and the — day of — in every year :

Floating  
charge.

AND the Company hereby charge their undertaking and all their property and assets, both present and future (including their uncalled capital), with the payment of the said principal sum and interest in accordance with the foregoing covenant, to the intent that this Debenture shall be a floating security on the said undertaking and property, but so that the Company shall not be at liberty to create any mortgage or charge in priority to this Debenture, without the consent of the Mortgagee or the persons deriving title under him.

IN WITNESS, &c.

## No. II.

### MORTGAGE of FREEHOLD PROPERTY by a LIMITED COMPANY (to accompany the Debenture in the last Precedent) (h).

Parties.

THIS INDENTURE, made the — day of —, 19—, BETWEEN the — Company, Limited, whose registered office is at — (hereinafter called the Company), of the one part, and A. B., of, &c. (hereinafter called the Mortgagee), of the other part :

---

*Robson v. Smith*, 1895, 2 Ch. 118; 64 L. J. Ch. 457. As to the meaning of "debentures," and generally on the subject, see Palmer, 10th ed.

This deed must be registered under s. 93 of the Companies (Consolidation) Act, 1908: *Millingworth v. Houldsworth*, 1904, A. C. 355; 73 L. J. Ch. 739.

(h) As a general rule mortgages by limited companies are in the same forms as mortgages by individuals. This deed should be produced to the Registrar with the debenture for registration: Companies (Consolidation) Act, 1908, s. 93. The section also applies to the mortgage of a ship: *Cunard Steamship Co. v. Hopwood*, 1908, 2 Ch. 564; 77 L. J. Ch. 785. Company precedents are generally outside the scope of this work.

WHEREAS the Company are seised in fee simple free from incumbrances of the hereditaments hereinafter described :

Seisin of Company.

AND WHEREAS the Mortgagee has advanced to the Company the sum of £——, and in consideration thereof the Company have executed a Debenture to the Mortgagee, bearing even date with but executed before these presents, whereby they have covenanted to pay the sum of £—— to the Mortgagee on the —— day of —— next, with interest thereon at the rate of £— per cent. per annum, and also, so long as the said principal sum shall remain unpaid, to pay to him interest thereon at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year: And the Company have charged their undertaking and all their property and assets, present and future, with the payment of the said sum of £—— and the interest thereon to the intent that the said Debenture may be a floating security on the said undertaking and property:

Advance to Company on security of Debenture.

AND WHEREAS on the treaty for the advance of the said sum of £—— it was agreed that the repayment thereof with interest should be further secured in manner hereinafter appearing:

Agreement for further security.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the premises, the Company, As Beneficial Owners, hereby convey unto the Mortgagee

Conveyance.

ALL THAT, &c. (*See Forms, Sect. II., Purchase Deeds, sup.*)

To HOLD unto and To THE USE of the Mortgagee in fee simple, subject to the following proviso (namely):—

PROVIDED ALWAYS, that if the said principal sum of £—— and the interest thereon shall be duly paid in accordance with the said Debenture, the said hereditaments shall, at the request and cost of the Company or the persons deriving title under them, be reconveyed to them or as they may direct.

Proviso for redemption.

(*Add Forms Nos. 15 and 49, and other clauses as required.*)

IN WITNESS, &c.

## No. III.

MORTGAGE of RATES by a DISTRICT COUNCIL to secure the repayment by INSTALMENTS of MONEY borrowed under the powers of the PUBLIC HEALTH ACT, 1875 (i).

BY VIRTUE of the Public Health Act, 1875 (*add other Act (if any) under which money is borrowed*), and of a sanction under the seal of the Local Government Board dated the — day of —, THE Urban District Council of —, in the County of — (hereinafter called the Council), in consideration of the sum of £—— now paid by A. B., of, &c., C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), to N. O., the treasurer of the Council, do hereby grant and assign unto the Mortgagees such proportion of the rates arising or accruing by virtue of the said Act[s] from the general district rates of the said district, and of all other rates (if any) out of which the Council are authorised to defray expenses incurred by them in the execution of the said Act[s] as the said sum of £—— doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said rates :

Parties.

District council assigns rates to Mortgagee until principal money with interest be repaid.

Habendum.

To HOLD unto the Mortgagees from the date hereof until the said sum of £——, with interest thereon at the rate of £— per cent., shall be fully paid and satisfied :

Principal to

AND IT IS HEREBY DECLARED (*k*) that the sum of £——, being

(i) See s. 233. Under this section where the loan is for a permanent purpose it must be secured by a mortgage of the rates with the sanction of the Board: *R. v. Locke*, 1910, 2 K. B. 201; 79 L. J. K. B. 659. As to the different cases in which rates may be mortgaged, see, 41 Sol. J. 709, and see County Council Mortgages Act, 1909.

(k) If the repayment is to be by equal payments of principal and interest combined, substitute as follows :—

AND IT IS HEREBY DECLARED that the said sum of £—— shall be repaid to the Mortgagees, with interest thereon at the rate aforesaid, by thirty equal yearly [*or by sixty equal half-yearly*] instalments of £—— each of principal and interest combined, the first instalment to be paid on the — day of —, 19—, and a subsequent instalment to be paid on every — day of — [and — day of —] up to and including the — day of —, 19—, according to the Schedule hereto, and every such payment, &c. (*continue as in text*).

one-sixtieth part of the said principal sum of £—, together with interest on so much of the said principal sum as shall for the time being remain unpaid, shall be paid on the — day of — next and on every subsequent — day of — and — day of — up to and including the — day of —, 19—, according to the Schedule hereto, and every such payment as aforesaid shall be made to the Mortgagees, or the persons deriving title under them, at the — Bank, or at such other bank or place as they shall from time to time by writing direct.

be paid by instalments.

IN WITNESS whereof the Council have hereunto affixed their common seal, and the Mortgagees have hereunto set their hands and seals, the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

| No. of Payment. | Date of Payment. | Amount of Instalment of Principal Money. | Interest. | Total. |
|-----------------|------------------|--|-----------|--------|
|                 |                  |  |           |        |

The common seal of the above-named District Council was hereunto affixed at a meeting of the said Council held on the — day of —, 19—, in the presence of

X. Y.,  
Clerk to the said Council.

Common seal. (L.S.)

*(Receipt of treasurer of District Council to be written at foot of above Mortgage.)*

RECEIVED the — day of —, 19—, for and on behalf of the — District Council, from the above-named A. B., C. D., and E. F., the sum of £—, the consideration money above expressed to be paid by them to me.

Witness.

N. O.,

Treasurer of the said District Council.

## No. IV.

STATUTORY DECLARATION *by the Clerk to the District Council to accompany the last PRECEDENT (I).*

I, X. Y., of —, do solemnly and sincerely declare as follows:—

That declarant  
is Clerk to Dis-  
trict Council.

1. I AM the duly appointed Clerk to the Urban District Council of —, in the County of — (hereinafter called the Council), and I have the custody of the books of the Council.

Amount of  
outstanding  
loans.

2. THE outstanding loans of the Council now remaining due on the credit of the general district rates amount together to £—, and no more. The particulars of such loans are correctly stated in the Schedule hereto.

Resolution of  
Council to  
borrow money.

3. I WAS present at a meeting of the Council, held on the — day of —, 19—, when it was resolved that the offer of A. B., C. D., and E. F. to lend to the Council the sum of £— (being the amount of the loan sanctioned by the order of the Local Government Board dated the — day of —, 19—) be accepted.

4. I WAS also present at a meeting of the Council, held on the — day of —, 19—, when it was resolved that the common seal of the Council be affixed to the mortgage to the said A. B., C. D., and E. F. then produced, and the common seal was accordingly affixed thereto at the said meeting in my presence.

AND I make, &c.

THE SCHEDULE ABOVE REFERRED TO.

Particulars of loans.

DECLARED, &c.

X. Y.

Matters to be  
attended to by  
mortgagees of  
district rates  
under Public  
Health Act,  
1875.

(I) A person lending money to a local authority under the provisions of the Public Health Act, 1875, should require the production of the order of the Local Government Board sanctioning the loan, and the delivery to him of copies (certified by the clerk) of such order and of the resolutions of the council as to the borrowing of the money, and the affixing of the common seal to the mortgage: *A.G. v. Tottenham U. D. Council*, (1910) 73 J. P. 437. He should also examine the register of mortgages kept by the council under s. 237 of the Act. He may also reasonably ask for a statutory declaration to the effect of the above Precedent.

Under s. 295 the order of the Local Government Board is binding and conclusive as to all matters to which it refers.

## SECTION II.

MORTGAGES ARRANGED ACCORDING TO THE  
CHARACTER OF THE MORTGAGEES.

GROUP A. — MORTGAGES TO CO-OWNERS (*m*), MARRIED WOMAN TRUSTEE, AND WHERE THE MONEY IS ADVANCED UNDER AN ORDER OF THE COURT.

## No. I.

MORTGAGE to FOUR persons, Two of whom advance part of the money in UNEQUAL shares, and the OTHER TWO advance the REMAINDER on a JOINT ACCOUNT (*n*).

THIS INDENTURE, made the — day of —, 19—, BETWEEN Parties.  
A. B., of, &c. (hereinafter called the Borrower), of the 1st part,  
C. D., of, &c. (*one Mortgagee*), of the 2nd part, E. F., of, &c.  
(*another Mortgagee*), of the 3rd part, and G. H., of, &c., and  
I. K., of, &c. (*other Mortgagees*), of the 4th part:

WHEREAS, &c. (*Recite Borrower's seisin*), *Form No. 1.*

AND WHEREAS the said C. D. has agreed to advance to the Agreement for  
advance.  
Borrower the sum of £100, and the said E. F. has agreed to  
advance to the Borrower the sum of £200, and the said G. H.  
and I. K. have agreed to advance to the Borrower the sum of  
£150 out of money belonging to them on a joint account upon  
having the repayment of the said several sums, with interest  
thereon as hereinafter mentioned, secured in manner hereinafter  
appearing :

---

(*m*) For precedents of mortgages on joint accounts see last Section, Group A, *sup.*

(*n*) Where several persons contribute the money advanced between them, it is generally convenient to take the mortgage in the names of some of them, or their nominees, as joint tenants, with a separate declaration of trust. See the next Precedent. Above Pre-  
cedent not in  
the usual form.

The above Precedent is avoided in practice, and will be used in those cases only where the contributories are not willing that the statutory power of sale and other remedies against the land shall be capable of being exercised by the legal mortgagees without the concurrence of all the contributories or their respective representatives.

NOW THIS INDENTURE WITNESSETH as follows:—

Covenant by  
borrower with  
one Mortgagee  
to pay money  
advanced by  
him.

1. IN pursuance of the said agreement and in consideration of the sum of £100 now paid by the said C. D. to the Borrower (*the receipt, &c.*), the Borrower hereby covenants with the said C. D., &c. (*to pay principal and interest, Forms Nos. 4 and 6*).

Similar  
covenant with  
another.

2. IN further pursuance of the said agreement and in consideration of the sum of £200 now paid by the said E. F. to the Borrower (*the receipt, &c.*), the Borrower hereby covenants with the said E. F., &c. (*to pay principal and interest, Forms Nos. 4 and 6*).

Similar cove-  
nant with joint  
Mortgagees.

3. IN further pursuance of the said agreement and in consideration of the sum of £150 now paid by the said G. H. and I. K. out of money belonging to them on a joint account to the Borrower (*the receipt, &c.*), the Borrower hereby covenants with the said G. H. and I. K., and with each of them, &c. (*to pay principal and interest, Forms Nos. 4 and 6*).

Conveyance by  
Borrower to all  
the Mort-  
gagees.

4. FOR the considerations aforesaid the Borrower, As Beneficial Owner, hereby conveys unto the said C. D., E. F., G. H., and I. K. (hereinafter called the Mortgagees).

ALL, &c. (*See Forms, Sect. II., Purchase Deeds*).

TO HOLD unto and To THE USE of the Mortgagees in fee simple:

Proviso for  
redemption.

PROVIDED ALWAYS, that if the said principal sums of £100, £200, and £150, with interest thereon, respectively shall be paid on the — day of — next, according to the foregoing covenants, the premises hereinbefore conveyed shall, at the request and cost of the Borrower or the persons deriving title under him, be duly reconveyed to him or them.

(*Add provisions as to fire insurance, &c., Form No. 19, also Forms Nos. 15 and 49, and other special clauses as required.*)

Declaration  
that Mort-  
gagees shall  
be entitled  
*pari passu*.

5. DURING the continuance of this security all persons in whom the hereditaments hereby conveyed shall for the time being be vested shall hold the same (subject to the right of redemption subsisting therein) IN TRUST for the persons for the time being entitled to the principal sums of £100, £200, and £150 hereby secured, and the interest thereon respectively, *pari passu* and without any preference or priority.

And that each  
Mortgagee  
or set of mort-  
gagees shall

6. IF the person or persons for the time being entitled to any of the said principal sums of £100, £200, and £150, or such part thereof respectively as shall for the time being remain

owing, shall at any time or times request the person or persons entitled to the other principal sums hereby secured to join with him or them in exercising the statutory power of sale or in taking such other proceedings as may be necessary or proper for enforcing payment of the money hereby secured, then and in such case the last-mentioned person or persons shall comply with such request.

join with the others in selling, &c.

IN WITNESS, &c.

## No. II.

DECLARATION *of* TRUST *of* MONEY SECURED *on* MORTGAGE, *and* CONTRIBUTED *by* DIFFERENT LENDERS *in* UNEQUAL PROPORTIONS, *the* MORTGAGE *having been taken in the* NAMES *of* FOUR TRUSTEES NOMINATED *by the* LENDERS *(o)*.

THIS INDENTURE, made, &c., BETWEEN I. K., of, &c. (*one Contributory*), of the 1st part, L. M., of, &c., and N. O., of, &c. (*other Contributories*), of the 2nd part, P. Q., of, &c., and R. S., of, &c. (*other Contributories*), of the 3rd part, T. V., of, &c., the wife of U. V., of, &c. (*another Contributory*), of the 4th part, and A. B., of, &c., C. D., of, &c., E. F. and G. H., of, &c. (hereinafter called the Mortgagees), of the 5th part :

Parties.

WHEREAS by an Indenture (hereinafter called the Mortgage) bearing even date with but executed before these presents, and made between X. Y., of, &c., of the one part, and the Mortgagees of the other part, in consideration of the sum of £5,000 therein expressed to be paid to the said X. Y. by the Mortgagees out of money belonging to them on a joint account, divers hereditaments in the Parish of —, in the County of —, therein more particularly described, have been conveyed to the Mortgagees in fee simple, by way of mortgage for securing the payment on the — day of — by the said X. Y. to the Mortgagees of the principal

Recital of Mortgage of even date for £5,000.

(o) The mortgage in this case is supposed to have been in the form of Prec. I., Sect. I., Group A, p. 808, *sup.*, with the variations given in that Precedent.

It will be borne in mind that it is a breach of trust for trustees to lend on a contributory mortgage unless expressly authorised so to do: *Re Dire*, 1909, 1 Ch. 328; 78 L. J. Ch. 248.

Contributory mortgages.

sum of £5,000, with interest thereon at the rate of £— per cent. per annum :

AND WHEREAS the said sum of £5,000 was in fact money contributed by the parties hereto of the first four parts (hereinafter collectively called the Contributories) in the shares and amounts next hereinafter mentioned (that is to say), the sum of £1,000 (part thereof) by the said I. K., the sum of £1,500 (other part thereof) by the said L. M. and N. O., as the trustees of an Indenture of Settlement dated the — day of —, and made upon the marriage of — with —, the sum of £2,000 (other part thereof) by the said P. Q. and R. S., as the executors and trustees of the Will of — (deceased), dated the — day of —, and the sum of £500 (residue thereof) by the said T. V., being money belonging to her for her separate use :

NOW THIS INDENTURE WITNESSETH and it is hereby declared as follows :—

1. THE Mortgagees shall stand possessed of the said sum of £5,000 secured by the Mortgage, and the interest thereon, Upon the trusts following (that is to say), As to the sum of £1,000 (part of the said principal sum) and the interest thereon, In trust for the said I. K. absolutely, As to the sum of £1,500 (other part of the said principal sum) and the interest thereon, In trust for the said L. M. and N. O., as the trustees of the said Indenture of Settlement of the — day of —, As to the sum of £2,000 (other part of the said principal sum) and the interest thereon, In trust for the said P. Q. and R. S., as the executors and trustees of the said Will of the said —, And as to the sum of £500 (residue of the said principal sum) and the interest thereon, In trust for the said T. V. for her separate use, and so that the Contributories shall be entitled to their several and respective shares in the said principal sum and interest *pari passu*, and without preference or priority :

2. THE Mortgagees shall stand possessed of the hereditaments conveyed by the Mortgage (subject to the right of redemption subsisting therein), and all other the securities for the said principal sum of £5,000 and the interest thereon, In trust for the Contributories according to their several shares and interests in the said principal sum and interest.

3. If any one or more of the Contributories shall at any time request the Mortgagees to require payment of the said mortgage

That £5,000 was contributed by several persons in different shares.

Declaration by Trustees that they will stand possessed of said £5,000.

As to part for I. K.

As to other part for L. M. and N. O.

As to other part for P. Q. and R. S.

And as to residue for T. V.

No priority between *cestui que trust*.

Declaration that Trustees shall hold securities in trust for Lenders according to their shares and interests.

Mortgagees to call in debt if requested by

debt, or to enforce such payment by exercising the statutory power of sale, or by foreclosure proceedings or otherwise, the Mortgagees shall comply with such request unless the other Contributories or some or one of them shall be willing to pay to the person or persons making such request his or their share of the said mortgage debt upon having a transfer of such share, or unless some other arrangement can be made between the Contributories in relation thereto.

either of the  
Contributories.

4. PROVIDED ALWAYS, that upon any sale of the hereditaments conveyed by the Mortgage under the statutory or other power of sale affecting the same, or upon any transfer or other dealing with the said sum of £5,000 secured by the Mortgage or the security therefor, no purchaser or other person dealing with the legal mortgagee or mortgagees for the time being shall be concerned to see to the application of the purchase-money or of the money paid on a transfer or other dealing or to inquire into the trusts hereof, and accordingly it shall not be necessary to disclose these presents on any such sale or other dealing as aforesaid.

Purchaser not  
to be con-  
cerned to see  
to application  
of purchase-  
money.

IN WITNESS, &c.

### No. III.

#### DECLARATION of TRUST of PART of a sum of MONEY secured on a CONTRIBUTORY MORTGAGE (p).

THIS INDENTURE made, &c., BETWEEN A. B., of, &c., C. D., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees), of the one part, and I. K., of, &c., of the other part (*Recite Mortgage, as in last Precedent*):

Parties.

AND WHEREAS the sum of £2,000 (part of the sum of £10,000 in the Mortgage expressed to be paid by the Mortgagees) was in fact paid out of money belonging to the said I. K.:

Title to part  
of debt.

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows:

1. THE Mortgagees shall stand possessed of the sum of £2,000 (part of the said principal sum of £10,000 secured

Declaration  
of trust.

(p) See note to last Precedent.

by the Mortgage) and the interest thereon, In trust for the said I. K. absolutely, and so that as between the said sum of £2,000 and the interest thereon, and the residue of the said sum of £10,000 and the interest thereon, there shall be no preference or priority.

*(Adapt clauses 2, 3 and 4 of last Precedent.)*

IN WITNESS, &c.

#### No. IV.

DECLARATION of TRUST of PART of a SUM OF MONEY secured on a CONTRIBUTORY MORTGAGE where the Mortgage contains a PROVISION for the REDUCTION of RATE of INTEREST on punctual payment, and where the EQUITY OF REDEMPTION has been SETTLED (g).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., C. D., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees), of the one part, and I. K., of, &c., and L. M. of, &c. (*one set of Contributories, being trustees*), of the other part (*Recite Mortgage to X. Y. for £10,000 containing a provision for reducing rate of interest if punctually paid, defining it as the Mortgage: Recite also a settlement of the equity of redemption of the mortgaged property, and a transfer of the Mortgage to the Mortgagees:*)

Recital that mortgage money was contributed by various persons.

AND WHEREAS the sum of £10,000 so expressed to be paid by the Mortgagees was contributed by several persons or classes of persons in various amounts and to the intent that the same might be invested by the Mortgagees on the security of the Mortgage:

That part was contributed by persons named.

AND WHEREAS the sum of £2,000, part of the said sum of £10,000, was contributed by the said I. K. and L. M. out of money belonging to them on a joint account, and the Mortgagees have agreed to execute such declaration of trust in favour of the said I. K. and L. M. as is hereinafter contained:

That Mortgagees have given similar

AND WHEREAS the Mortgagees have executed or are about to execute similar declarations of trust in favour of the other persons

Certificate of ownership of part of mortgage debt.

(g) Under this scheme a declaration of trust in the nature of a certificate will be given to each class of contributories. Special care should be taken in the selection of the persons in whom the mortgage is to be vested.

or classes of persons by whom the remainder of the said sum of £10,000 was contributed as aforesaid: declarations to other Contributories.

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows:—

1. THE Mortgagees shall stand possessed of the sum of £2,000 (part of the said sum of £10,000 secured by the Mortgage), and of a proportionate part of the interest of the said sum of £10,000, In trust for the said I. K. and L. M. as joint tenants, but *pari passu* with and without any preference or priority to or over the several contributories of the sum of £8,000 (the residue of the said sum of £10,000) in respect of their several parts or proportions of the said residue, or of the interest thereon. Declaration by Mortgagees that they will hold part of the mortgage debt in trust for above-named persons.

2. THE Mortgagees and their respective estates and effects shall not be answerable to the said I. K. and L. M. or the persons deriving title under them for any defect or insufficiency of the aforesaid security, or for omitting or neglecting until required so to do by the said I. K. and L. M. or the persons deriving title under them to call in or enforce payment of the said sum of £10,000 or any part thereof, notwithstanding the time for the payment thereof shall have arrived or have passed, nor for accepting interest on the said sum of £10,000 at the said reduced rate of £— per cent. per annum, notwithstanding such interest may not be paid at or within the time for that purpose appointed by the Mortgage. Proviso for indemnity of Mortgagees.

3. THE Mortgagees or the persons deriving title under them shall be at liberty at any time and from time to time during the continuance of the said security, if they shall think fit, and without any further consent on the part of the said I. K. and L. M. or the persons deriving title under them, to consent to the exercise by the tenant for life or other the person or persons having for the time being the powers of a tenant for life under the said Indenture of Settlement of all or any of the powers conferred on him or them by the Settled Land Acts, 1882 to 1890: Power for Mortgagees to consent to exercise of powers conferred on Mortgagor by S. L. Acts,

AND ALSO to release from the said debt of £10,000 or any part thereof any part of the hereditaments for the time being charged therewith, on being satisfied that the other hereditaments for the time being charged therewith will be a sufficient security for the same, or on other hereditaments being substituted and to release part of mortgaged property.

for the released hereditaments or some of them, or on any other terms which they may think reasonable.

4. (*Add clause 4 of Precedent II. of this Group.*)

IN WITNESS, &c.

## No. V.

### MORTGAGE to TRUSTEES, *one of whom is a MARRIED WOMAN* (r).

Parties.

THIS INDENTURE made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., the wife of J. D., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter collectively called the Mortgagees), of the other part:

Seisin of Borrower.

WHEREAS (*Form No. 1.*)

Agreement for advance.

AND WHEREAS (*Form No. 2A*):

NOW THIS INDENTURE WITNESSETH as follows:—

Conveyance to uses as Mortgagees may appoint by way of sale, &c.

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagees to the Borrower (*the receipt, &c.*), the Borrower, As Beneficial Owner, hereby conveys unto the said E. F. (s)

ALL THOSE, &c. (*see Forms, Sect. II., Purchase Deeds, sup.*)

To HOLD unto the said E. F. in fee simple,

To SUCH USES as the Mortgagees or the survivors or survivor of them, or the executors or administrators of such survivor, or other the persons entitled to give a discharge for the principal money hereby secured, may for the purpose of giving effect to any sale (under the statutory power), transfer, reconveyance or

Mortgage to married women trustees.

Power of appointment.

Effect of M. W. P. Act, 1907, s. 1.

(r) See *Re Harkness and Allsopp*, 1896, 2 Ch. 358; 65 L. J. Ch. 726. The married woman, being a trustee, could not in exercising the power of sale convey the legal estate to a purchaser without the concurrence of her husband if the property were simply conveyed to the mortgagees. The insertion of a power of appointment avoids this difficulty. The M. W. P. Act, 1907, s. 1, enables a married woman (without the deed being acknowledged): to convey trust property *vested* in her, but it does not expressly empower a married woman to acquire and hold trust property apart from her husband (but see M. W. P. Act, 1882, s. 24); hence, if under the old law any interest would vest in the husband, he may still be a necessary party.

(s) E. F. is made a grantee to uses. If an acknowledgment for production of documents is added it should be given to him.

release from time to time or at any time by deed appoint, And in default of and subject to any such appointment, To the use of the Mortgagees in fee simple, But subject to the proviso for redemption hereinafter contained (that is to say):—

2. PROVIDED ALWAYS (*Forms Nos. 9 and 9B*).

Proviso for redemption.

(*Add other clauses as required. See particularly Forms referred to in Precedent I., Sect. I., Group A, p. 808, sup.*)

IN WITNESS, &c.

## NO. VI.

MORTGAGE *where the MONEY is advanced under an ORDER out of FUNDS in COURT.*

THIS INDENTURE made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part.

Parties.

WHEREAS (*Form No. 1*).

Seisin of Borrower.

AND WHEREAS the Mortgagees lately agreed with the Borrower to advance to him the sum of £—— upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing, it being intended that the said sum of £—— should be advanced out of money in Court under an Order to be obtained for the purpose, being the Order next hereinafter recited :

Agreement for loan to be advanced out of money in Court.

AND WHEREAS by an Order (*t*) of the Chancery Division of the High Court of Justice made by the Honourable Mr. Justice ——, on the —— day of ——, In the matter of the estate of X. Y., deceased (No. ——), it appearing that it was for the benefit of the persons interested under the Will of the said X. Y. that the sum of £—— cash in Court to the credit of the said matter should be invested by way of mortgage of the hereditaments hereinafter described, an inquiry was directed as to whether a good title could be made thereto, and in case a good title could be made a mortgage thereof was directed to be settled by the Judge and the said sum of £—— to be paid out of Court accordingly :

Recital of Order authorising the investment of funds in Court on the security of the Mortgage.

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(*t*) For form of summons, see Daniell's Chancery Forms, 5th ed., 574, and for form of order, Seton, 6th ed., 1177. The mortgage is executed before the money is paid out.

Master's  
certificate as  
to title.

AND WHEREAS the Master attached to the Chambers of the said Judge duly made his certificate dated the — day of — and filed on the — day of —, from which it appeared that a good title could be made to the hereditaments hereinafter described, and that a proper mortgage thereof had been settled and that the Borrower was the person by whom the same was to be executed before the said sum of £— was paid out of Court:

Master's  
signature.

AND WHEREAS these presents are, as appears from the signature of the said Master in the margin hereof, the Mortgage referred to in the said certificate:

NOW THIS INDENTURE WITNESSETH as follows:—

Covenant to  
pay principal  
and interest.

1. IN pursuance of the said Agreement and in consideration of the sum of £— to be paid pursuant to the said Order to the Borrower (a receipt for which sum is intended to be indorsed on these presents and to be signed by the Borrower), the Borrower hereby covenants with the Mortgagees and with each of them to pay into Court to the credit of the matter aforesaid on the — day of — next the sum of £—, with interest thereon from the date hereof at the rate of £— per cent. per annum, AND also so long, &c. (*Form No. 6*).

Conveyance.

2. FOR the consideration aforesaid (*Form No. 8*).

Proviso for  
redemption.

3. PROVIDED ALWAYS, that on payment into Court to the credit of the matter aforesaid on the — day of — next by the Borrower (*Forms Nos. 9 and 9B*).

4. (*Add Form No. 15 and clauses as to fire insurance, &c., as required. See Forms, and Precedent I., Sect. I., Group A., p. 808, sup.*)

5. (*Also add Form No. 29, mortgagee to accept new security under the approval of the Court.*)

IN WITNESS, &c.

## GROUP B.—MORTGAGES TO BANKERS, BUILDING SOCIETIES, AND OTHER PUBLIC BODIES.

## No. I.

## MORTGAGE of FREEHOLDS to a BANKING COMPANY to secure BALANCE of CURRENT ACCOUNT (a).

THIS INDENTURE, made the — day of —, 19—, BETWEEN Parties.  
A. B., of, &c. (hereinafter called the Borrower), of the one  
part, and the — Bank, Limited, whose registered office is  
at — (hereinafter called the Company), of the other part :

WHEREAS the Borrower is seised in fee simple in possession Recital of  
free from incumbrances of the hereditaments hereinafter  
described :

AND WHEREAS the Borrower has an account current with the Agreement by  
Company, and the Company have consented to make advances  
to him or give him other accommodation upon having such  
security for the balance from time to time owing on the said  
account as hereinafter appearing :

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration Covenant by  
of the premises, the Borrower hereby covenants with the Com-  
pany that the Borrower will on demand, or if no demand is  
made in his lifetime then his heirs, executors or administrators,  
will on his death, pay to the Company the balance (if any) then  
owing from the Borrower on his account current with the  
Company for cheques, notes, or bills drawn, accepted or indorsed  
by him, or for advances made to him, or for his accommodation  
or benefit, or otherwise howsoever (including interest with half-  
yearly rests, commission and other customary charges), and will  
also pay interest on such balance from the date of such demand  
or death (as the case may be) at the rate of £— per cent. per  
annum.

2. In consideration of the premises the Borrower, As Beneficial Conveyance of  
Owner, hereby conveys unto the Company freeholds to  
Company.

ALL, &c. (*see Forms, Sect. II., Purchase Deeds*).

(a) This instrument will be a security for such an amount as the stamp  
duty at 2s. 6d. per cent. will cover. Every mortgage to a limited company  
must be registered under the Companies (Consolidation) Act, 1908, s. 93,  
otherwise it will be void against the liquidator or creditors. Mortgages  
to Limited  
Companies.

Habendum.

To HOLD unto and To THE USE of the Company (*x*) and their assigns in fee simple :

Proviso for redemption.

PROVIDED ALWAYS, that if all money hereinbefore covenanted to be paid shall be duly paid accordingly, then the said hereditaments and premises shall, at the request and cost of the Borrower or the persons deriving title under him, be reconveyed to him or them.

Covenant by Borrower for insurance.

3. THE Borrower hereby covenants with the Company (*Form No. 19, saying "the Company" for "the Mortgagees"*).

As to how notice demanding payment is to be served.

4. ANY demand for payment of the balance intended to be hereby secured may be made by a notice in writing signed by any director, manager, or cashier on behalf of the Company, and the provisions of section sixty-seven of the Conveyancing and Law of Property Act, 1881, shall apply to every such notice.

Statutory power of sale to apply, with a variation.

5. THE power of sale conferred on mortgagees by the Conveyancing and Law of Property Act, 1881, shall take effect as regards these presents as if section twenty had been omitted from the said Act, but the said power shall not be exercised unless default is made in payment of the said balance or part thereof for one calendar month after it has become payable under the foregoing covenant: And upon any sale made under the said statutory power as varied by these presents a statutory declaration by a director, manager, or cashier of the Company that payment of the balance has been duly demanded and not paid shall be conclusive evidence of such demand and non-payment in favour of any purchaser or other person deriving title to the premises under any such sale (*xx*).

(Add *Form No. 49 and other special clauses as required; see Forms.*)

IN WITNESS, &c.

What passes a fee simple to a corporation aggregate. Cannot be a grantee to uses.

(*x*) No words of inheritance are applicable: a conveyance "to the company" would pass the fee simple: Co. Lit. 9 b, 94 b; Conv. Act, 1881, s. 51, does not apply. Nor can a company be a grantee to uses within the Statute of Uses; hence there can be no resulting use. The usual words of limitation are added, however, to show what estate is intended to pass.

(*xx*) See *Berry v. Halifax, &c., Co.*, 1901, 1 Ch. 188; 70 L. J. Ch. 85.

## No. II.

MORTGAGE of COPYHOLDS to TRUSTEES (y) for BANKING  
COMPANY to secure BALANCE of CURRENT ACCOUNT.

THIS INDENTURE, made the — day of —, 19—, BETWEEN Parties, A. B., of, &c. (hereinafter called the Borrower), of the 1st part, the — Bank, Limited, whose registered office is at — (hereinafter called the Company), of the 2nd part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Trustees), of the 3rd part (*Recite Borrower's admission to copyholds and agreement to give accommodation, as in last Precedent*) :

NOW THIS INDENTURE WITNESSETH as follows :—

1. (*Covenant with the Company to pay money owing on account current, as in last Precedent.*) Covenant to pay.

2. In consideration of the premises, the Borrower, As Beneficial Owner, hereby covenants with the Trustees (*continue as in Form No. 10, but substitute for the condition creating the right of redemption the following words*) :— Covenant to surrender to Trustees for Company.

SUBJECT, NEVERTHELESS, to a condition for making void the said surrender if all the money hereinbefore covenanted to be paid shall be duly paid accordingly. Subject to condition.

3. (*Add Forms Nos. 10A, 10B, 15, 19 and 49, and other special clauses required, substituting "Company" for "Mortgagees," except in Form 10B, where "Trustees" should be substituted for "Mortgagees."*)

4. THE Trustees and the survivor of them, and the heirs, assigns (z), executors or administrators of such survivor, or other the trustees or trustee for the time being hereof, shall stand possessed of the premises hereinbefore covenanted to be surrendered and of the benefit of that covenant, In trust for the Declaration of trust.

(y) The conditional surrender must be made to a trustee, as a corporation cannot claim admittance.

(z) If the trustees are admitted, then on the death of the survivor the legal customary estate would pass to his devisee or customary heir: Cop. Act, 1894, s. 88; if the trustees are not admitted, then the right to admission will pass to the personal representative of the survivor: Conv. Act, 1881, s. 30; *Re Hughes*, 1884, W. N. 53. Devolution of copyhold trust estates.

Company and their assigns, subject to the right of redemption (if any) for the time being subsisting hereunder.

Power to  
appoint new  
Trustees.

5. THE Company shall have power from time to time to appoint a new trustee or new trustees of these presents (a).

IN WITNESS, &c.

### No. III.

#### CONDITIONAL SURRENDER *to a TRUSTEE for a COMPANY.*

Consideration.

Surrender by  
Borrower to  
Trustees for  
Banking  
Company.

THE Manor of —, in) BE IT REMEMBERED that on the — the County of —, day of —, 19—, A. B., of &c., came before L. M., of, &c., steward of the said Manor, and in consideration of accommodation agreed to be given to him by the — Bank, Limited, whose registered office is at — (hereinafter called the Company), surrendered into the hands of the lord of the said Manor by the hands and acceptance of his said steward according to the custom of the said Manor

ALL, &c. (*parcels*), To which premises the said A. B. was admitted tenant at a court held for the said Manor on the — day of —,

To THE USE of C. D., of, &c., and E. F., of, &c. (being trustees appointed by and on behalf of the Company), and their heirs, at the will of the lord, according to the custom of the said Manor, by and under the rents, suits and services therefor due and of right accustomed,

Subject to  
condition for  
making void  
same on  
payment of  
money owing  
on account  
current.

SUBJECT, NEVERTHELESS, to this condition, that if the said A. B. shall on demand, or if no demand is made in his lifetime, then if his heir, executors or administrators, shall on his death pay to the Company the balance, &c. (*follow the words of the covenant in clause 1 of Precedent I. of this Group*), being the same money as is secured by the covenant of the said A. B. contained in an Indenture bearing even date herewith, then and in such case this

Vesting  
declaration  
as regards  
copyholds.

(a) The right of a surrenderee of copyholds before admittance is a legal interest within T. Act, 1893, s. 12 (3), hence cannot be vested by declaration. If, however, there has been no surrender, the benefit of the covenant to surrender could be vested by the company in the new and continuing trustees under that section.

surrender shall be void and of no effect, otherwise the same shall remain in full force.

TAKEN, &c.

#### NO. IV.

#### MORTGAGE to TRUSTEES for UNINCORPORATED BANKING COMPANY to secure BALANCE of CURRENT ACCOUNT.

THIS INDENTURE, made the — day of —, 19—, Parties,  
BETWEEN A. B., of, &c. (hereinafter called the Borrower), of  
the one part, and C. D. and E. F., of, &c. Trustees of the —  
Banking Company (b), of, &c. (hereinafter called the Trustees),  
of the other part (*Recitals as in Precedent I. of this Group*) :

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration  
of the premises, the Borrower hereby covenants with the Trustees  
that the Borrower will, &c. (*Covenant to pay balance of account  
current, as in clause 1 of Precedent I. of this Group*).

Covenant to  
pay principal  
and interest.

2. IN consideration of the premises, the Borrower, As Beneficial Owner, hereby conveys unto the Trustees,

Conveyance to  
Trustees.

ALL, &c. (*see Forms, Sect. II., Purchase Deeds*).

To HOLD unto and To THE USE of the Trustees in fee  
simple (*Proviso for redemption and clauses as to notice and  
statutory power of sale, as in Precedent I. of this Group*) :

3. IF at any time during the continuance of this security  
the hereditaments hereby conveyed shall be conveyed to any  
other persons or person as trustees or a trustee of the  
Company, for the purposes of this security, so as to vest in them  
or him either solely or jointly with the trustees or trustee  
by whom such conveyance shall be made, then and in every  
such case the persons or person in whom the said hereditaments  
and premises shall for the time being be vested as aforesaid  
shall have and may exercise the statutory power of sale and all  
other powers vested in the Trustees, as fully and effectually as if  
they or he had been named herein instead of the Trustees, and

Power of sale  
and other  
powers may be  
exercised by  
any persons in  
whom pro-  
perty may  
become vested  
as Trustees of  
the Company.

(b) After the next mention of “the — Banking Company” add the  
words “(hereinafter called the Company).”

Where the borrower pays sums to the credit of his account with the bank,  
the bank can, apart from express instructions from the borrower, appropriate  
the money as they choose: *Deley v. Lloyds Bank*, 1910, 1 Ch. 648; 79  
L. J. Ch. 561.

Appropriation  
by bank of  
sums paid by  
borrower.

the statement in any deed by which the said hereditaments may be conveyed as aforesaid that the persons or person to whom the same shall be thereby conveyed are or is trustees or a trustee of the Company shall be conclusive evidence of the fact so stated, and no purchaser or other person deriving title to the said hereditaments or any part thereof, through any act of the persons or person to whom such statement shall relate, shall be concerned to see or inquire whether the same persons or person shall have been duly and properly constituted such trustees or trustee, or whether the power is properly exercised or not, or whether the consent of the Company has been obtained to the exercise of the power or not.

Acknowledgment by Trustees, or by two directors, to be conclusive evidence that money is satisfied.

4. THE acknowledgment by the persons or person in whom the hereditaments hereby conveyed shall for the time being be vested for the purposes of this security, or by any two Directors of the Company, that the money hereby secured has been fully satisfied, shall be conclusive evidence that the same has been satisfied accordingly.

Security to extend to future shareholders of Company.

5. THESE presents shall be a security to the Company for the money hereby secured, of whatever shareholders or partners the Company may from time to time consist, and under whatever style or firm the banking business now carried on by the Company may for the time being be carried on, and the expression "the Company" shall be construed accordingly.

(Add Form No. 49 and other special clauses as required.)

IN WITNESS, &c.

## No. V.

MORTGAGE (c) to a BANKING COMPANY of FREEHOLDS and LEASEHOLDS comprised in the DOCUMENTS contained in SCHEDULE to secure BALANCE of CURRENT ACCOUNT (Short form) (d).

THIS INDENTURE, &c. (Parties and definitions as in Precedent I. of this Group), WITNESSETH as follows :—

Covenant by Borrower to pay money owing on account current.

1. IN consideration of accommodation given to the Borrower by the Company, the Borrower hereby covenants with the

(c) This instrument will be a security for such an amount as the stamp at 2s. 6d. per cent. will cover.

Advantage of mortgage by

(d) It may often be expedient for the company to require that a short

Company (*Covenant by Borrower to pay balance on account current, as in Precedent I. of this Group*).

2. THE BORROWER, As Beneficial Owner, hereby conveys and demises unto the Company

Borrower conveys and demises freeholds and leaseholds comprised in scheduled documents.

ALL AND SINGULAR the hereditaments and property comprised in the documents mentioned in the Schedule hereto,

To HOLD the same as to such of them as are freehold unto and To THE USE of the Company and their assigns in fee simple, and as to such of them as the Borrower is entitled to for any term or terms of years, whether absolute or determinable, unto the Company for all the residue of the said terms of years respectively (except the last three days of such terms respectively):

PROVIDED ALWAYS, that if all money hereinbefore covenanted to be paid shall be duly paid pursuant to the foregoing covenant, the said premises shall, at the request and cost of the Borrower or the persons deriving title under him, be reconveyed or surrendered to him or them.

Proviso for redemption.

(*Add and adapt Forms Nos. 11A, 11B, and 49, also add clauses as to notice and as to statutory power of sale, as in Precedent I. of this Group.*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

| Date of Document. | Parties. | Nature of Document. |
|-------------------|----------|---------------------|
|                   |          |                     |

mortgage by deed of the property comprised in the deposited documents should be executed by the borrower in preference to a mere memorandum by way of equitable mortgage, so that the bankers may at once obtain all the proper remedies, including a power to sell in case of default, and also the advantage of priority, which the acquisition of the legal estate without notice of prior equitable incumbrances may frequently afford.

deed over memorandum.

When the advances are large, the completeness and efficiency of the security ought not to be sacrificed to the consideration that the mortgage deed will become a document of title, and will require a reconveyance when the debt is satisfied.

The reconveyance may be framed in a few words and indorsed on the mortgage deed. For a form of such reconveyance and surrender, as being applicable to the present form of mortgage as soon as the debt is satisfied, see Prec. VIII., Reconveyances, p. 998, *inf.*

Reconveyance.

## No. VI.

MORTGAGE *of* FREEHOLDS *to a* BUILDING SOCIETY (*c*).

|  |   |
|--|---|
| Parties.                                     | THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and the ——— Benefit   |
| B. S. Act, 1874, provides for incorporation. | ( <i>c</i> ) The Building Societies Act, 1836, for the regulation of Benefit Building Societies, is repealed by the Building Societies Act, 1874, which Act has been amended by subsequent Acts, viz., (1875) 38 & 39 Vict. c. 9; (1877) 40 & 41 Vict. c. 63; (1884) 47 & 48 Vict. c. 41; and (1894) 57 & 58 Vict. c. 47; but the repeal does not affect any subsisting society certified under the repealed Act, until such society shall have obtained a certificate of incorporation under the new Act. Any society whose rules have been certified under the Act of 1836 may obtain a certificate of incorporation: Act of 1875, s. 2; and every subsisting or future society, upon receiving a certificate of incorporation, becomes a body corporate by its registered name, see Act of 1874, s. 9; see also Wurtzburg, <i>passim</i> . |
| Investments                                  | Any society may from time to time, as the rules permit, invest any portion of its funds upon real or leasehold securities, or other specified securities, or in or upon any security in which trustees are for the time being authorised by law to invest, but may not advance money upon the security of any freehold, copyhold, or leasehold estate which is subject to a prior mortgage, unless the prior mortgage is in favour of the society: Act of 1874, s. 25; Act of 1894, ss. 13, 17; see also <i>Sheffield, &amp;c. Building Socy. v. Aizlewood</i> (1889), 44 Ch. D. 412; 59 L. J. Ch. 34. The restriction that money must not be advanced on second mortgage unless the first mortgage is in favour of the society is imposed by the Act of 1874, s. 13.   |
| Intestacy of member.                         | Whenever a member of a society, having executed a mortgage to the society, dies intestate, leaving an infant heir, the society, after selling the mortgaged property, may pay to his administrator the surplus proceeds of the sale to the amount of £150: Act of 1874, s. 30; L. T. Act, 1897, s. 1.   |
| Infants.                                     | An infant may be a member, but cannot execute a valid mortgage: <i>Nottingham, &amp;c. Socy. v. Thurstan</i> , 1903, A. C. 6; 72 L. J. Ch. 134.   |
| Stamp duty.                                  | S. 41 exempts from stamp duty the rules of the society and other documents therein mentioned, but provides that the exemption shall not extend to any mortgage. The result is that unincorporated societies still enjoy the benefit of exemption from stamp duty on mortgages not exceeding £500, and further charges where the amount does not exceed £500, and that incorporated societies are not entitled to exemption, see <i>Alpe</i> , 11th ed., p. 263; <i>Higmore</i> , 2nd ed., 179, 300–2.   |
| Copyholds.                                   | In the case of copyholds, the trustees of the society will join and the borrower covenant with the society to surrender to the trustees subject to a condition making void the surrender on payment by the borrower of all money secured by the mortgage.   |
| Rules.                                       | The rules of the particular society must, of course, be considered in preparing mortgages of this kind. A mortgagor to a building society is  |

Building Society, incorporated under the Building Societies Act, 1874 (hereinafter called the Society), of the other part :

WHEREAS (*Form No. 1, seisin of Borrower*) :

AND WHEREAS the Borrower is the owner of — shares in the Society, numbered respectively —, and he is by the rules of the Society entitled to an advance of £—— in respect of each of the said shares, making an aggregate advance of £——, on his executing the Mortgage hereinafter contained :

Recital that Borrower is entitled to advance in respect of his shares.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN consideration of the sum of £—— now paid by the Society to the Borrower (the receipt whereof the Borrower hereby acknowledges), the Borrower, As Beneficial Owner, hereby conveys unto the Society

Conveyance.

ALL THOSE, &c. (*see Forms, Sect. II., Purchase Deeds*).

Parcels.

To HOLD unto and To THE USE of the Society in fee simple, subject to the rights of the Borrower under section forty-two of the Building Societies Act, 1874, and to the following provisions :—

Habendum.

2. THE Society shall permit the Borrower to hold and enjoy the said hereditaments, and receive the rents and profits thereof, so long as the Borrower shall duly pay the subscriptions and other money which ought from time to time to be paid in respect of the said shares, according to the rules for the time being in force of the Society, and shall in all respects duly observe the said rules, and also the covenants and provisions hereinafter contained which ought on his part to be observed and performed.

Borrower to remain in possession until default.

3. IF the Borrower shall at any time fail for three calendar months to pay the said subscriptions or other money or any part thereof, or shall at any time fail in other respects to observe and perform the said rules, covenants and provisions or any of them, then and in any of the said cases the Society may at any time thereafter take possession of the said hereditaments and let the same for any term and upon such conditions as they shall think fit, and may appoint any person or persons, at such remuneration as they shall think proper, to collect the rents and profits of the said hereditaments on behalf of the Society until sale thereof,

Power of Society in case of default to let, appoint receiver, and sell.

bound by the rules as altered at the date of the contract: *Bradbury v. Wild*, 1893, 1 Ch. 377; 62 L. J. Ch. 503. See also as to alterations in rules, *Botten v. City, &c. Socy.*, 1895, 2 Ch. 441; 64 L. J. Ch. 609. For the statutory form of receipt which operates as a reconveyance see *Prec. XI., Reconveyances*, p. 1001, *infra*; Schedule to Act of 1874.

and also at the discretion of the Society, and without giving any previous notice to the Borrower, may sell the said hereditaments and premises, with all such powers as regards the mode of sale and otherwise as are by the Conveyancing and Law of Property Act, 1881, annexed to the power of sale conferred by that Act on mortgagees.

Power to  
Society to  
transfer when  
power of sale  
exercis-  
able (f).

4. If the aforesaid power of sale becomes exercisable, the Society shall also have power, without any consent of the Borrower, to assign all principal money and interest then owing on the security of these presents to any other society or corporation or to any person and to convey the said hereditaments to such transferee in fee simple, subject to redemption on payment of the principal money then due, with interest thereon at the rate hereinafter mentioned, and in such case the whole of the money so transferred shall be deemed to be principal money, and shall become payable to the transferee on demand, with interest thereon at the rate of £5 per cent. per annum, from the date of such transfer and payable every half-year, and such transferee shall have all the powers conferred upon mortgagees by the Conveyancing and Law of Property Act, 1881, in like manner as if such transfer had been an original mortgage for the principal sum then owing and the interest to become due thereon, and as if the Borrower had covenanted to pay the same accordingly: And the provisions herein contained having special reference to the Society or their rules shall thereupon cease to apply to this security, and every statement of fact made in good faith contained in such transfer shall as against the Borrower be deemed to be conclusive and binding.

Application of  
rent and sale  
money.

5. THE Society shall, out of any rents or proceeds of sale received by them as aforesaid, in the first place retain and pay all costs, charges and expenses incurred by them in relation to this security; and in the next place retain all subscriptions, fines and other money then due, or which may thereafter become due in respect of the said shares or under this security: And shall pay the surplus (if any) to the Borrower.

Lessees and  
purchasers not  
bound to  
inquire as to  
default.

6. UPON any lease or sale made by the Society under any statutory or other powers the lessee or purchaser shall not be

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(f) In view of the decision in *Re Rumney and Smith*, 1897, 2 Ch. 351; 66 L. J. Ch. 641, it would seem advisable to insert a clause to this effect.

concerned to see or inquire whether any of the cases have happened in which such lease or sale is authorised to be made, or otherwise as to the propriety of such lease or sale, or be affected by notice that no such case as aforesaid has arisen or that the lease or sale is otherwise improper.

7. No lease made by the Borrower during the continuance of this security shall have effect by virtue of the Conveyancing and Law of Property Act, 1881, unless the Society shall consent thereto in writing signed by their secretary, but this clause shall cease to have effect after a transfer of this security shall have been made.

Declaration as to leasing power.

8. THE Borrower hereby covenants with the Society to make the several payments and observe and perform the rules for the time being in force of the Society in respect of the said shares which on his part ought to be paid, observed and performed :

Covenants by Borrower to make payments and observe rules;

AND ALSO at all times during the continuance of this security to keep the said hereditaments in good and substantial repair and condition, and all buildings insured against loss or damage by fire in the sum of £—— at least, and to pay all premiums payable in respect of such insurance within seven days after the same shall become due, and, on demand, to deliver [*or produce*] to the Society the policy of such insurance, and the receipt for every such premium.

to repair and insure.

9. THE powers hereby conferred on the Society are in addition to all other powers and remedies vested in the Society under the rules and regulations thereof, or by statute, for recovering or enforcing payment of the money intended to be hereby secured.

Proviso that powers conferred are in addition to other powers and remedies.

(*Add Form No. 49 and other special clauses as required.*)

10. In these presents the expression “Borrower” includes, where the context admits, the persons deriving title under him.

Interpretation.

IN WITNESS, &c.

## NO. VII.

### MORTGAGE of LEASEHOLDS to a BUILDING SOCIETY (*g*).

THIS INDENTURE, made, &c. (*Date and parties as in last Precedent*):

(*g*) See note to last Precedent.

Recital of  
Lease.

WHEREAS by an Indenture of Lease dated, &c. (*Recite Lease, as in Form No. 28, Purchase Deeds, p. 304, sup.*):

That Borrower  
entitled to  
advance.

AND WHEREAS (*Recite that Borrower is entitled to an advance in respect of his shares, as in last Precedent*):

NOW THIS INDENTURE WITNESSETH as follows:—

Borrower  
demises

1. IN consideration, &c. (*as in last Precedent*), the Borrower, As Beneficial Owner, hereby demises unto the Society

ALL the premises comprised in and demised by the recited Lease,

TOGETHER with the messuage and buildings lately erected thereon or on parts thereof,

to Society for  
residue of  
term (less  
three days).

TO HOLD unto the Society during the residue of the term granted by the recited Lease (except the last three days of the said term), subject to the rights of the Borrower under section forty-two of the Building Societies Act, 1874, and to the following provisions:—

Borrower to  
remain in  
possession  
until default.

2. THE Society shall permit the Borrower to hold and enjoy the premises, and receive the rents and profits thereof, so long as the Borrower shall duly pay the subscriptions and other sums of money which ought from time to time to be paid in respect of the said shares, according to the rules for the time being in force of the Society, and shall in all respects duly observe the said rules, and shall also pay the rent reserved by the recited Lease and observe and perform the covenants and conditions therein contained which ought on the lessee's part to be observed and performed.

In case of  
default Society  
may take pos-  
session and let  
or sell.

3. IF the Borrower shall at any time fail for three calendar months, &c. (*continue as in clause 3 of last Precedent*).

4. IF the aforesaid, &c. (*continue as in clause 4 of last Precedent*).

Declaration as  
to application  
of rents and  
sale money.

5. THE Society shall out of any rents or proceeds of sale received by them as aforesaid in the first place retain and pay all costs, charges and expenses incurred by them in relation to this security, including any costs, charges or expenses which may be incurred in preserving the premises from forfeiture, by paying the rent or performing the covenants on the lessee's part reserved and contained by and in the recited Lease: And in the next place shall retain all subscriptions, fines, and other money which shall then be due, or which may thereafter become due in respect of the said shares or under this security, and shall pay the surplus (if any) to the Borrower.

6. (*Trust of principal term, power to appoint new Trustee, and appointment of Society as attorney to assign principal term, Forms Nos. 11A, 11B, and 11C.*)

7. (*Lessees and purchasers not bound to inquire as to default, as in clause 6 of last Precedent.*)

8 TO 11. (*As in clauses 7 to 10 of last Precedent.*)

IN WITNESS, &c.

## No. VIII.

### MORTGAGE of FREEHOLDS or LEASEHOLDS (*h*) to a BUILDING SOCIETY. (*Another Form.*) (*i*)

THIS INDENTURE, made, &c. (*Date and parties as in Precedent VI. of this Group. Recite scisin or lease, see last two Precedents*): Parties.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN consideration of the sum of £—— now paid to the Borrower out of the funds of the Society, being the advance to which he is entitled under the rules of the Society in respect of — shares held by him (the receipt whereof the Borrower hereby acknowledges), the Borrower hereby covenants with the Society to pay all the subscriptions and other money and observe all the regulations which, according to the rules of the Society for the time being in force, ought to be paid and observed by him in respect of his said shares, or the advance now made to him as aforesaid, or in respect of the hereditaments intended to be hereby conveyed [*or demised*]. In consideration of sum now paid.  
  
Borrower covenants to pay subscriptions, &c.

2. For the consideration, aforesaid the Borrower, As Beneficial Owner, hereby conveys [*or demises*] unto the Society, Borrower conveys freeholds [*or demises leaseholds*] to Society.

ALL AND SINGULAR the hereditaments described in the Schedule hereto [*or All the premises comprised in the recited Lease*],

To HOLD unto and To THE USE of the Society in fee simple [*or unto the Society for the residue of the term granted by the recited Lease (except the last three days thereof)*], subject to the following provisions :—

(*h*) The alterations to be made if the property is leasehold are inserted within square brackets.

(*i*) See notes to the last Precedent but one.

Proviso for vacating the deed.

3. If the Borrower shall duly make all the payments and observe all the regulations hereby covenanted to be made and observed by him, then these presents shall be vacated by a receipt to be indorsed hereon pursuant to section forty-two of the Building Societies Act, 1874 (*j*).

Declaration that Society shall permit Borrower to retain possession until default.

4. The Society shall permit the Borrower to retain possession of the premises hereby conveyed [demised] so long as he shall duly make the payments and observe the regulations aforesaid, but if he shall make default in the payment of any monthly subscription or other money payable by him under the said rules or the foregoing covenant for three calendar months after the same shall have become due, or shall commit any other breach of the said rules, then and in any of such cases the Society may at any time thereafter enter into possession of the premises.

Power to Society to enter in case of default.

Cases in which powers of sale and of appointing a receiver may be exercised.

5. The powers of sale and of appointing a receiver conferred by section nineteen of the Conveyancing and Law of Property Act, 1881, may be exercised by the Society at any time hereafter, if at the time of the exercise thereof any case shall have happened in which the Society is hereinbefore authorised to take possession of the premises, and it shall not be necessary to give any such notice to the Borrower as is required by section twenty of the said Act: And any receiver to be appointed under the power conferred by that Act may, out of the money received by him in that capacity, pay the monthly subscriptions and other money the payment whereof is intended to be hereby secured, in addition to the payments (other than interest) directed or authorised to be made thereout by section twenty-four of that Act.

In case of a sale, what sum shall be deemed to be due.

6. If the premises or any part thereof shall be sold by the Society under the said power, there shall be deemed to be due and owing at the time of such sale from the Borrower to the Society, in addition to the arrears of subscriptions and other money then actually due and owing, such a sum of money as under Rule No. — of the present registered rules of the Society, or under any new rule to be substituted for the same and which may be then in force, would be payable by the Borrower for redemption if he had elected to redeem in the half-year in which such sale shall be made, and the same shall be deducted and retained by the Society out of the net proceeds of sale accordingly.

(*j*) For form of receipt, see Reconveyances, Prec. XI., p. 1001, *inf.*

7. UPON, &c. (*continue as in clause 6 of Precedent VI., p. 888, sup.*).

[8. *Trusts of principal term, power to appoint new Trustee, and appointment of Society as attorney to assign principal term, Forms Nos. 11A, 11B, and 11C.*]

9. No lease, &c. (*continue as in clause 7 of Precedent VI.*).

10. IF the aforesaid power of sale becomes exercisable (*continue clause 4 of Precedent VI. Add Form No. 49 and other special clauses as required*).

11. (*As in clause 10 of Precedent VI.*).

IN WITNESS, &c. (*Add Schedule of Freeholds.*)

### No. IX.

CONVEYANCE by VENDOR by direction of PURCHASER of a  
FREEHOLD or LEASEHOLD HOUSE to a DISTRICT COUNCIL  
by way of MORTGAGE to secure the repayment of MONEY  
ADVANCED under the SMALL DWELLINGS ACQUISITION ACT,  
1899.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (herein- Parties.  
after called the Vendor), of the 1st part, C. D., of, &c. (herein-  
after called the Purchaser), of the 2nd part, and the Urban [*or*  
Rural] District Council of —, in the County of — (herein-  
after called the Council), of the 3rd part :

WHEREAS the Vendor is seised in fee simple in possession of Recital of  
the house hereinafter described free from incumbrances [*or* seisin.  
(*Recite Lease and assignment to Vendor. See Form No. 28,*  
*Sect. I., Purchase Deeds, p. 304, sup.*)]:

AND WHEREAS the Vendor has agreed to sell the premises Agreement  
to the Purchaser, who resides in the said house, at the price for sale.  
of £—:

AND WHEREAS the Council have agreed to advance the sum of Agreement  
£— to the Purchaser for the purpose of enabling him to by Council to  
complete the said purchase under the provisions of the Small advance part  
Dwellings Acquisition Act, 1899, the repayment thereof with of purchase-  
interest to be secured in the manner hereinafter appearing:— money.

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration Conveyance.

of the sum of £—— by the Council, at the request of the Purchaser, and the sum of £—— by the Purchaser now paid to the Vendor (the receipt of which sums of £—— and £——, making together the said purchase-money of £——, the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, at the request of the Purchaser, hereby conveys [*or assigns* (*l*)] and the Purchaser hereby conveys and confirms unto the Council.

Parcels. ALL THAT dwelling-house, area and garden, known as No. —, — Street, in the Parish of —, in the County of —, in the occupation of the Purchaser [*or All the premises comprised in and demised by the recited Lease*],

Habendum. To HOLD unto the Council in fee simple [*or for the residue of the term* (*m*) granted by the recited Lease] subject to the following proviso (namely):

Proviso for redemption. 2. PROVIDED ALWAYS, that if the Purchaser or the persons deriving title under him shall pay to the Council the sum of £——, with interest thereon at the rate of £— per cent. per annum (*n*), by sixty equal half-yearly instalments of £—— each of principal and interest combined, the first instalment to be paid on the — day of —, 19—, and a subsequent instalment to be paid on every — day of — and — day of — up to and including the — day of —, 19—, according to the Schedule hereto, and shall also duly observe and perform all other the statutory conditions, then and in such case the Council shall, at the request and cost of the Purchaser or the persons deriving title under him, convey the premises to him or them in fee simple [*or assign the premises to him or them for the residue of the said term, subject to the said rent, covenants and conditions*]:

Provisions of Act to be incorporated. 3. ALL the provisions of the said Act specifying the rights and remedies of a local authority advancing money under the said

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(*l*) Under the Act it seems that the mortgage must be by assignment.

(*m*) There must be at least sixty years unexpired at the date of the purchase: s. 10.

(*n*) The interest must not exceed 10s. above the rate at which the money can be borrowed by the Council from the Public Works Loan Commissioners: s. 1 (3).

Act and the rights, duties and liabilities of the person to whom an advance is made shall be deemed to be incorporated in these presents. (*Add Form No. 49.*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

| Number<br>of Payment. | Date of<br>Payment. | Amount of Instalment<br>of Principal Money. | Interest. | Total. |
|-----------------------|---------------------|---|-----------|--------|
|                       |                     |   |           |        |

The common seal of the above-named  
 Council was hereunto affixed at a  
 meeting of the said Council held  
 on the — day of —, 19—, in  
 the presence of  
 X. Y.,  
 Clerk to the Council.

Common seal. (L.S.)

Signed, sealed, &c.

## SECTION III.

MORTGAGES ARRANGED ACCORDING TO THE  
SUBJECT-MATTER OF THE SECURITY.

## GROUP A.—MORTGAGES OF PUBLIC-HOUSES.

## No. I.

MORTGAGE *of a* FREEHOLD PUBLIC-HOUSE.

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., licensed victualler (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part :

Seisin of Borrower. WHEREAS the Borrower is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described :

Agreement for advance. AND WHEREAS the Mortgagees have agreed to advance to the Borrower the sum of £— out of money belonging to them upon a joint account upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing :

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows :—

Preliminary Clause and covenant to pay principal and interest. 1. In pursuance, &c. (*Form No. 3*), the Borrower hereby covenants (*Form No. 4*) :

AND so long as (*Form No. 6*).

Conveyance. 2. For the consideration aforesaid (*Form No. 8*).

Assignment of Goodwill and benefit of licences. 3. For the consideration aforesaid the Borrower, As Beneficial Owner, hereby assigns unto the Mortgagees

ALL THAT the Goodwill (*o*) of the business of a Licensed Victualler carried on upon the premises hereinbefore conveyed, And the full benefit of all licences (*p*) held in connexion with the said business :

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(*o*) The goodwill should be expressly assigned, see, *Re Bennett*, 1899, 1 Ch. 316; 68 L. J. Ch. 104.

(*p*) It should be ascertained, by inspection of the register, that the licence is in order.

AND ALSO full right to recover and receive All compensation, which may at any time become payable to the Borrower or the persons deriving title under him by virtue of the Licensing (Consolidation) Act, 1910 (*q*), or any amendment thereof, on account of the non-renewal of any of the said licences under the provisions of the said Act or any amendment thereof,

Compensation which may be payable under Licensing (Consolidation) Act, 1910.

TO HAVE AND RECEIVE the premises unto the Mortgagees absolutely, but subject to the proviso for redemption hereinafter contained.

4. PROVIDED ALWAYS (*Forms Nos. 9 and 9B, saying the premises hereinbefore conveyed and assigned*). Proviso for redemption.

5. PROVIDED ALWAYS that upon any sale &c. (*Form No. 15*).

6. FOR the consideration aforesaid the Borrower hereby irrevocably nominates (*continue as in Form No. 23, Power of attorney to recover compensation, &c.*)

7. THE Borrower hereby covenants with the Mortgagees and with each of them in manner following (that is to say) :—(*continue as in Form No. 23A, but omit the clause relating to a tied house, unless the Mortgagees are brewers, &c. (r)*). Covenants by Borrower.

8. THE Borrower, for himself and his assigns, hereby further covenants with the Mortgagees that (*Form No. 18, Covenant against registration*).

9. THE provisions of the Conveyancing and Law of Property Act, 1881 (*continue as in Form No. 14, Power to appoint manager of business*).

10. THE Borrower or the persons deriving title under him (*Form No. 41, Restriction on leasing &c. powers*).

11. (*Add Form No. 49 as to duties on land values*).

IN WITNESS, &c.

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(*q*) As to compensation, see *Law Guarantee, &c. Socy. v. Mitcham, &c. Co.*, 1906, 2 Ch. 98; 75 L. J. Ch. 556; *Dawson v. Braime's, &c. Brewery*, 1907, 2 Ch. 359; 76 L. J. Ch. 588; *Re Bentley's, &c. Breweries*, 1909, 2 Ch. 609; 78 L. J. Ch. 704; *Bent's Brewery Co. v. Dykes* (1909), 100 L. T. 476.

Compensation where licences withdrawn.

(*r*) This Precedent can readily be adapted to a second mortgage to distillers, &c.; in this case Form No. 16A should be added.

Second mortgage to distillers.

## No. II.

MORTGAGE *of a* LEASEHOLD PUBLIC-HOUSE *to a* COMPANY  
*of* BREWERS.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and — & Company, Limited, whose registered office is at, &c. (hereinafter called the Company), of the other part :

Recital of  
Lease to  
Borrower.

WHEREAS by an Indenture of Lease (*Form No. 28, Sect. I., Purchase Deeds, p. 304, sup.*) :

Agreement for  
advance of  
fixed sum and  
further  
advances.

AND WHEREAS the Company have agreed to advance to the Borrower the sum of £—, and also such further sums (s) as hereinafter mentioned, upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing :

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows :—

Preliminary  
Clause and  
covenant to  
pay principal  
and interest  
and other  
money owing  
to the Com-  
pany.

1. IN pursuance, &c. (*Form No. 3*), the Borrower hereby covenants (*Form No. 4*) :

AND so long as (*Form No. 6*) :

AND ALSO that the Borrower will on demand, or if no demand shall be made in his lifetime, his executors or administrators will on his death, pay to the Company all such money (over and above the said sum of £— and the interest thereon) as at the time of such demand or death, as the case may be, shall be owing from the Borrower to the Company for goods sold, money lent, or on any other account whatever, with interest thereon from the date of such demand or death at the rate of £— per cent. per annum.

How demand  
to be made.

2. ANY demand for payment of such money as aforesaid may be made by a notice in writing signed by any two or more of the Directors of the Company, and the provisions of section sixty-seven of the Conveyancing and Law of Property Act, 1881, shall apply to every such notice.

Demise of  
public-house.

3. FOR the consideration aforesaid the Borrower (*continue as in Form No. 11*).

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(s) This deed must be stamped *ad valorem* up to an amount sufficient to cover the whole of the principal money intended to be advanced. This Precedent can be adapted to a mortgage to distillers.

4. THE Borrower hereby covenants with the Company (Form No. 11A). Trust of principal term.

5. THE Company and the persons deriving title under them (Form No. 11B). Power to appoint new Trustee.

6. FOR the consideration aforesaid (*continue as in clause 3 of last Precedent, substituting "Company" for "Mortgagee."*) Assignment of Goodwill, &c.

7. PROVIDED ALWAYS (Form No. 9): Proviso for redemption.

AND ALSO of all other principal money (if any) becoming due under these presents and interest thereon at the rate aforesaid from the day of the same becoming due as hereinbefore provided, the premises hereinbefore demised and assigned shall, at the request and cost of the Borrower or the persons deriving title under him, be duly surrendered and reassigned to him or them.

8. THE Company may, at any time after the — day of — next (t), enter into the possession or receipt of the rents and profits of the mortgaged premises or any part thereof, and may conduct and manage the business thereof and may grant or enter into any leases or agreements for leases thereof for such term, at such rents, and subject to such covenants and conditions as the Company shall think fit, and in particular any such lease or agreement may contain a covenant on the part of the lessee not to buy or receive, or sell or dispose of, upon the mortgaged premises any beer, ale, stout, porter or other malt liquors, except such as shall be supplied by the Company, and the same may be made in part consideration of a fine or premium: AND may accept surrenders of leases and tenancies upon such terms in all respects as the Company may think proper, and make allowances to and arrangements with tenants: AND may employ such agents or receivers to manage and conduct the business or to collect the rents of the premises, and at such salaries or commission as may be thought fit: AND may expend such money for repairs, insurance or otherwise, in relation to the premises, as may be deemed expedient, and any money so expended, with interest thereon at the rate of £— per cent. per annum from the time of the expenditure thereof, shall be repaid by the Borrower to the Company on demand, and in the meantime shall be charged on all the premises hereby mortgaged.

Powers for Company to take possession and manage, to grant leases,  
accept surrenders,  
employ agents,  
expend money in repairs.

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(t) A licence by a tenant authorising the landlord to eject him on a specified day is void: *Edwick v. Hawkes* (1881), 18 Ch. D. 199; 50 L. J. Ch. 577.

Proviso for indemnity of Company.

9. THE Company, in the event of their entering into possession or receipt of the rents and profits of the mortgaged premises or any part thereof as aforesaid, shall not be liable to account except for such money as the Company shall actually receive, and shall not be liable for any involuntary losses or injury incurred or occasioned by the Company. While the Company shall be in possession of the premises as aforesaid the powers conferred by section eighteen of the Conveyancing and Law of Property Act, 1881, shall in addition to the powers aforesaid be exercisable by the Company and not by the Borrower.

Statutory power of sale to apply with modifications.

10. THE powers of sale and of appointing a receiver conferred upon mortgagees by the Conveyancing and Law of Property Act, 1881, shall apply to this security, but without the restrictions imposed upon the exercise thereof by section twenty of that Act, and section seventeen of the said Act shall not apply to this security: AND upon any sale under the statutory power the Company may, if they think fit, allow the whole or any part of the purchase-money to remain on mortgage of the premises sold as well before as after conveyance &c. (*Form No. 15*).

Covenants by Borrower to keep up licences (u).

11. THE Borrower, for himself and the persons deriving title under him, hereby covenants with the Company that so long as any money remains due under these presents:—

(i.) THE Borrower will duly preserve and keep on foot and, as often as may be necessary without being required thereunto, renew the justices' and excise licences for the premises and will pay all sums and execute and do all instruments and things necessary or proper for that purpose, and also will, on demand by any one or more of the directors for the time being of the Company, from time to time produce or deliver at the registered office of the Company all the licences relating to the premises and all renewals thereof, And at all times at his own cost execute and do all such assurances, instruments, and things as shall be requisite for transferring and vesting the said licences or any of them to and in the nominee or nominees of the Company or as any one or more of the directors for the time being of the Company shall direct, and for withdrawing the name of the Borrower from the books of the excise in respect of the premises:

(ii.) THE Borrower will not sever from the mortgaged premises any trade or other fixtures now fixed or hereafter to be affixed to

(u) This clause extends the covenants given in Form No. 23A, see notes to that form.

the premises except for the purpose of renewing or replacing the same by other fixtures of equal or greater value :

(iii.) THE Borrower will at all times manage and conduct the said business in a lawful, orderly, and proper manner, and will not at any time commit, or suffer to be committed, any offence against, or refuse or neglect to comply with, any of the provisions of any Acts of Parliament for the time being in force relating to public-houses or the sale of intoxicating liquors, and will not do or suffer to be done anything whatsoever by reason whereof the said licences respectively may be curtailed, forfeited, suspended or destroyed, or the renewal thereof withheld, or whereby the said business or the goodwill thereof may in any way be or be liable to be prejudicially affected, or which may render or tend to render the Borrower liable in respect of the premises hereby mortgaged to the payment of a penalty, or which may disqualify him from receiving or holding the justices' or excise licences for any period :

to conduct business properly and in accordance with Licensing Acts,

(iv.) THE Borrower will not consume or sell, or permit to be consumed or sold, in or upon the premises any ale, beer, porter or stout, or other malt liquors other than such as shall have been purchased or taken from the Company, Provided that the Company be willing to supply the same to the Borrower at the fair market price of the day (x) :

not to sell beer, &c., other than what is supplied by Company,

(v.) THE Borrower will permit the agents and workmen of the Company at all reasonable times to enter upon the premises to put up, take down, and replace the Company's trade boards :

(vi.) THE Borrower will pay (*continue as in clause (iii.) of Form No. 23A*) :

to pay charges under Licensing Act, 1910.

(vii.) THE Borrower will insure (*continue as in clause (iv.) of Form No. 23A*).

To insure against fire and against forfeiture of licences.

. 12. THE Borrower hereby irrevocably appoints the Company and any one or more of the directors for the time being thereof, and their assigns or their substitute or substitutes, to be the attorney and attorneys of the Borrower, in his name and on his behalf, or otherwise, to recover and give receipts for any compensation payable under the Licensing (Consolidation) Act, 1910, as aforesaid, and as his act and deed to sign, seal and deliver and otherwise perfect any deed of assignment granted by the recited Lease

Power of attorney to Company to recover compensation, get in the principal term, apply for the renewal of licences, &c.

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(x) This covenant is valid, being confined to the continuance of the security, but could not be made to continue in force after the mortgage has been paid off, see note to Form No. 23A.

which may be required in order to vest in a purchaser or other person the residue of the term granted by that Lease, and also to apply for and obtain the annual renewal of the justices' and excise licences in respect of the premises, and to sign all proper notices and other documents, and to do all necessary acts for assigning and transferring the same licences to such person as the directors for the time being of the Company may think fit, and for withdrawing the entry of the Borrower from the books of the excise in respect of the premises, And to do all other such things as the directors for the time being of the Company may think fit in or about the premises as effectually as the Borrower himself could do: AND ALSO from time to time to appoint and remove at their or his pleasure any substitute or substitutes, or agent or agents under them or him in respect of all or any of the matters aforesaid upon such terms as they or he shall think fit: AND the Borrower hereby covenants with the Company to confirm whatsoever the said attorney or attorneys hereby appointed, or any substitute or agent, substitutes or agents, appointed by them or him may do or purport to do under the power of attorney herein contained.

Attornment by  
borrower.

13. For the purpose of better securing the right of the Company to take possession of the premises hereby mortgaged, the Borrower hereby attorns tenant to the Company of the premises hereby demised at the yearly rent of 10s., to be paid in advance half-yearly on the — day of — and the — day of — :

PROVIDED ALWAYS, that the Company may, at any time after the execution of these presents, enter into and upon the premises, or any part thereof, and determine the tenancy hereby created without giving to the Borrower any notice to quit :

PROVIDED ALSO, that the tenancy created by the said attornment shall not constitute the Company mortgagees in possession or render them liable to account as such.

14. (*Add Form No. 49 as to duties on land values.*)

Interpretation  
clause.

15. IN these presents, where the context so admits, the expression "the Borrower" includes his executors, administrators and assigns, and the expression "the Company" includes their assigns.

IN WITNESS whereof the Borrower hath hereunto set his hand and seal, and the Company have hereunto affixed their common seal, the day and year first above written.

GROUP B.—MORTGAGES OF MORTGAGE DEBTS, POLICIES, LIFE INTERESTS, AND REVERSIONS.

No. I.

MORTGAGE *of a* MORTGAGE DEBT *and the* FREEHOLD SECURITY (*y*).

THIS INDENTURE, made, &c., Between A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part :

Parties.

WHEREAS by an Indenture of Mortgage dated the — day of —, and made between X. Y., of, &c., of the one part, and the Borrower of the other part. certain freehold hereditaments at — were conveyed by the said X. Y. (who was then seised in fee simple) to the Borrower in fee simple, subject to a proviso for the redemption of the said hereditaments on payment by the said X. Y. to the Borrower of the sum of £1,000, with interest thereon at the rate of £— per cent. per annum, on the — day of — then next :

Recital of Mortgage.

AND WHEREAS the said principal sum of £1,000 still remains owing to the Borrower, with the current interest thereon :

That principal sum remains due.

AND WHEREAS (*Form No. 2A*):

Agreement for advance.

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance, &c. (*Covenant to pay principal money and interest, Forms Nos. 3, 4 and 6*).

Covenant to pay principal and interest.

2. For the consideration aforesaid the Borrower, as Beneficial Owner, hereby assigns unto the Mortgagee

Borrower assigns mortgage debt.

ALL THAT the principal sum of £1,000 now owing to the Borrower upon the security of the recited Mortgage, and all interest now due and henceforth to become due for the same, and the benefit of all securities for the same (including the statutory power of sale) :

To HOLD unto the Mortgagee absolutely, subject to the proviso for redemption hereinafter contained.

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(*y*) Notice of this assignment should be given to the original mortgagor, X. Y. In a sub-mortgage the security should generally be conveyed as well as the mortgage debt.

Form of sub-mortgage.

Borrower conveys mortgaged premises to Mortgagee.

3. For the consideration aforesaid the Borrower, As Beneficial Owner, hereby conveys unto the Mortgagee

ALL AND SINGULAR the hereditaments and premises comprised in and conveyed by the recited Mortgage,

To HOLD unto and To THE USE of the Mortgagee in fee simple, subject to the right of redemption now subsisting therein under the recited Mortgage, and also subject to the proviso for redemption hereinafter contained.

Proviso for redemption.

4. PROVIDED ALWAYS, that on payment on the — day of — next by the Borrower or the persons deriving title under him to the Mortgagee or the persons deriving title under him of the sum of £—, with interest thereon from the date hereof at the rate of £— per cent. per annum, the said principal sum and interest, hereditaments and premises hereinbefore assigned and conveyed respectively shall, at the request and cost of the Borrower or the persons deriving title under him, be duly reassigned and reconveyed to him or them, subject as to the said hereditaments to such right of redemption (if any) as shall for the time being be subsisting therein under the recited Mortgage.

Provision for indemnity of Mortgagee.

5. PROVIDED ALSO, that it shall not be obligatory upon the Mortgagee or the persons deriving title under him to sue for or require payment of the said principal sum and interest hereby assigned, or any part thereof, unless he or they shall think fit so to do, nor shall he or they be responsible for any loss which may arise by reason of his or their omission or delay to enforce any of the said securities for the said principal sum and interest, or any part thereof.

IN WITNESS, &c.

## No. II.

MORTGAGE *of a* POLICY *of* ASSURANCE *effected on the* LIFE *of the* MORTGAGOR (z). VARIATIONS *where* SEVERAL POLICIES *are* mortgaged.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and

Notice of mortgage of insurance policy.

(z) Notice of this mortgage should be given to the assurance office under the Policies of Assurance Act, 1867, unless the policy is in the name of the mortgagees. That Act gives to the assignee the right to sue upon the policy

E. F., of, &c. (hereinafter called the Mortgagees), of the other part:

WHEREAS the Borrower is now entitled to the policy of assurance hereinafter mentioned and assigned [the several policies of assurance particulars whereof are contained in the Schedule hereto]:

Title to policy.  
Variation  
where several  
policies.

AND WHEREAS (*Form No. 2A*):

Agreement for  
advance.

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows:—

1. In pursuance, &c. (*Covenant to pay principal money and interest, Forms Nos. 3, 4, and 6*).

Covenant to  
pay principal  
and interest.

2. For the consideration aforesaid the Borrower, As Beneficial Owner, hereby assigns unto the Mortgagees

Assignment of  
policy.

ALL THAT policy of assurance effected in the name and on the life of the Borrower for the sum of £—— with the —— Assurance Company dated the —— day of ——, numbered ——, and at the annual premium of £—— and the said sum of £—— assured by and all other money to become payable under the said policy and the full benefit of the said policy;

[ALL THOSE [*five*] policies of assurance effected in the name and on the life of the Borrower mentioned in the Schedule hereto, and all money to become payable thereunder and the full benefit thereof:]

Variation  
where several  
policies.

in his own name (s. 1), provided that a written notice of the date and purport of the assignment shall have been given to the company liable under the policy at their principal place of business (s. 2).

S. 22 of the Conv. Act, 1881, provides that the receipt of a mortgagee shall be a sufficient discharge for any money or securities comprised in his mortgage. Though under this section the trustees of a mortgaged fund may on its falling into possession safely pay the whole to the mortgagee, they may reasonably decline to pay more than is actually due on the security, particularly if they have notice of subsequent incumbrances: *Re Bell*, 1896, 1 Ch. 1; 65 L. J. Ch. 188; *Hockey v. Western*, 1898, 1 Ch. 350; 67 L. J. Ch. 166. The insurance company in the case of a mortgage of a policy is in the same position as a trustee in this respect.

Trustee of a  
mortgaged  
fund may  
safely pay over  
whole to  
mortgagee,  
but is not  
bound to do so.

A mortgage of a policy without other security is somewhat unusual; a life interest is generally included, see next Precedent.

It should be ascertained by inquiries at the assurance office that there are no subsisting charges on the policy, see, *Newman v. N.* (1885), 28 Ch. D. 674; 54 L. J. Ch. 598.

Proviso for redemption.

Covenant by Borrower to keep up policy.

Power to surrender policy to Company.

To HAVE AND RECEIVE the same unto the Mortgagees, subject to the proviso for redemption hereinafter contained :

3. PROVIDED ALWAYS (*Forms Nos. 9 and 9B, saying assigned and reassigned*).

4. THE Borrower hereby covenants with the Mortgagees and with such of them in manner following (that is to say):—(*continue as in Form No. 21*).

5. PROVIDED ALWAYS, that any policy (*continue as in Form No. 22*).

6. PROVIDED ALWAYS that upon any sale &c. (*Form No. 15*).

IN WITNESS, &c.

Schedule where several policies.

[THE SCHEDULE ABOVE REFERRED TO.]

| —   | Date of Policy. | Office in which effected. | Number of Policy. | Sum Assured exclusive of Bonus. | Annual Premium. |
|-----|-----------------|---------------------------|-------------------|---------------------------------|-----------------|
| 1   | 10th May, 1870  | Z. Society                | 1,001             | £ 4,000                         | £ 80 s. 0 d.    |
| 2   | 1st June, 1871  | Y. Company                | 10,400            | 5,000                           | 104 2 6         |
| &c. | &c.             | &c.                       | &c.               | &c.                             | &c.             |

No. III.

MORTGAGE of a LIFE ESTATE in LAND and of POLICIES of ASSURANCE to an ASSURANCE SOCIETY (a).

Parties

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., E. F., of, &c., G. H., of, &c., and K. L., of, &c. (the Estate Trustees of the — Assurance Society, a memorial of whose names has been duly enrolled in the Central Office of the Supreme Court of Judicature pursuant to the said Society's Act, 18— and which four persons are hereinafter called the Estate Trustees), of the other part :

(a) Notice of this mortgage should be given to the S. L. Act trustees of the Will and to the assurance office by which the policy was issued.

WHEREAS under the Will dated the — day of —, and proved on the — day of — at the — Probate Registry, of X. Y., deceased, who died on the — day of —, and of which M. and N. are the present trustees, the manors, messuages, lands and hereditaments described in the first Schedule hereto, and known as the Z. Estate, now stand limited, subject to the incumbrances mentioned in the second Schedule hereto, To the USE of the Borrower during his life without impeachment of waste, with remainders over :

Recital of Will under which the Borrower is tenant for life.

AND WHEREAS the Borrower is entitled to the policy [policies] of assurance effected in his own name and on his own life hereinafter mentioned and assigned :

Title to policy.

AND WHEREAS the Estate Trustees have agreed to advance (continue Form No. 2A) :

Agreement for advance.

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £— now paid by the Estate Trustees out of money belonging to them as such Trustees as aforesaid, to the Borrower (*the receipt, &c.*), the Borrower (*Form No. 4*) :

Covenant to pay principal and interest

AND ALSO (*Form No. 6*).

2. FOR the consideration aforesaid the Borrower, As Beneficial Owner, hereby bargains, sells and demises (*c*) unto the Estate Trustees

Demise of life estate.

ALL THAT mansion house called —, with the lands thereto belonging, and all the manors, messuages, lands, tithes, rents and hereditaments, in the Parishes of N. and B. or one of them, in the County of G., containing together — acres or thereabouts, and known as the Z. Estate, particulars whereof are contained in the first Schedule hereto, And all other (if any) the

Parcels.

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(*c*) Although not necessary in order to preserve (subject to the consent of the mortgagees) the tenant for life's powers of sale, &c., whether contained in the settlement (see *Re Beddingfield and Herring*, 1893, 2 Ch. 332; 62 L. J. Ch. 430) or statutory (see S. L. Act, 1882, s. 50), the form of mortgage by demise of the life estate for ninety-nine years, if the mortgagor so long lives, is retained as being still in common use. The words "bargain and sell" give an immediate estate to the mortgagee. Without them he would take only an "*interesse termini*" until entry.

Effect of "bargains and sells" in demise of life estate.

lands and hereditaments now subject to the limitations of the Will of the said X. Y., deceased :

Habendum.      To HOLD unto the Estate Trustees for the term of ninety-nine years from the date of these presents, if the Borrower shall so long live, without impeachment of waste, subject to the several incumbrances mentioned in the second Schedule hereto, and subject also to the proviso for redemption hereinafter contained.

Assignment of policy.      3. FOR the consideration aforesaid (*continue as in clause 2 of last Precedent, substituting " Estate Trustees " for " Mortgagees "*).

Proviso for redemption.      4. PROVIDED (*Forms Nos. 9 and 9B, saying hereinbefore demised and assigned, and duly surrendered and reassigned and substituting as above*).

Covenant by Borrower to insure against fire during his life.      5. THE Borrower hereby covenants with the Estate Trustees and with each of them that the Borrower will during his life, and so long as any money remains due under these presents, insure (*continue as in Form No. 19*).

Covenant to keep up life policy.      6. THE Borrower hereby further covenants with the Estate Trustees (*Form No. 21*).

Power to surrender life policy to Company.      7. PROVIDED ALWAYS, that any policy (*continue as in Form No. 22*).

8. PROVIDED ALWAYS that upon any sale &c. (*Form No. 15*).  
IN WITNESS, &c. (*d*).

THE FIRST SCHEDULE ABOVE REFERRED TO.  
Particulars of hereditaments.

THE SECOND SCHEDULE ABOVE REFERRED TO.  
Particulars of incumbrances.

| Amount Secured. | Date of Mortgage. | Present Mortgagees. | Rate of Interest. |
|-----------------|-------------------|---------------------|-------------------|
|                 |                   |                     |                   |

(*d*) If it is intended that the money shall not be called in during a certain time provided the mortgagor so long lives, see and adapt Form No. 33.

## No. IV.

MORTGAGE *of a LIFE INTEREST in INVESTMENTS and a*  
POLICY *of ASSURANCE (c).*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part:

Parties.

WHEREAS under an Indenture of Settlement dated the — day of —, and made, &c., the Borrower is entitled during his life to the annual income of the investments described in the Schedule hereto, now held on the trusts of the said Settlement [or on the trusts affecting the husband's [or wife's] trust fund under the said Settlement] or of the varied investments for the time being representing the investments so held, and which investments are now standing in the names of — as the present trustees of the said Settlement (f).

Recital of Settlement.

(c) Notice of this mortgage should be given to the assurance office by which the policy was issued and to the settlement trustees. Notice to the solicitors of the trustees is not sufficient: *Saffron Walden, dc. Socy. v. Rayner* (1880), 14 Ch. D. 406; 49 L. J. Ch. 465; and see, *Davis v. Hutchings*, 1907, 1 Ch. 356; 76 L. J. Ch. 272. Notice to one of several trustees is effectual so long as he remains trustee: *Ward v. Duncombe*, 1893, A. C. 369; 62 L. J. Ch. 881; unless he is himself the mortgagor: *Lloyd's Bk. v. Pearson*, 1901, 1 Ch. 865; 70 L. J. Ch. 422; *Re Dallas*, 1904, 2 Ch. 385, 412; 73 L. J. Ch. 365. Notice to all the existing trustees remains effectual, notwithstanding death or retirement: *Re Wasdale*, 1899, 1 Ch. 163; 68 L. J. Ch. 117; *Re Phillips*, 1903, 1 Ch. 183; 72 L. J. Ch. 94. As to the proper persons to whom to give notice in the case of a derivative trust, see, *Stephens v. Green*, 1895, 2 Ch. 148; 64 L. J. Ch. 546. As to the duties of trustees with reference to inquiries (1) as to prior incumbrances, see *Lov v. Bourcier*, 1891, 3 Ch. 82; 60 L. J. Ch. 594; *Davis v. Hutchings*, *sup.*; (2) as to state of investment, *Re Dartnall*, 1895, 1 Ch. 474; 64 L. J. Ch. 341. As to constructive notice of prior mortgages, see *Re Weiniger*, 1910, 2 Ch. 291; 79 L. J. Ch. 516.

Notice to Trustees and inquiries.

Where the fund is in Court a stop order must be obtained, see R. S. C., O. 46, rr. 12, 13. Where the fund is not in Court it may sometimes be desirable to give notice, in lieu of the old writ of *distringas*, to the company in whose books the stock or securities stand, see *ib.*, rr. 2 *et seq.* Where the Public Trustee acts as custodian trustee, notice should be given both to him and to the managing trustees: Withers, 117.

Stop order; *distringas*.

(f) If the funds are in Court this should be recited with the title to the action and fund and Form No. 36 should be used, see Prec. XII., p. 924, *inf.*

Funds in Court.

Title to policy. AND WHEREAS the Borrower is also entitled to the policy effected in his own name and on his own life hereinafter mentioned and assigned :

Agreement for advance. AND WHEREAS the Mortgagees have agreed to advance to the Borrower the sum of £—— out of money belonging to them upon a joint account upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing :

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows :—

Covenant to pay principal and interest.

1. IN pursuance, &c. (*Forms Nos. 3, 4, and 6*).

Assignment of life interest.

2. FOR the consideration aforesaid the Borrower, As Beneficial Owner, hereby assigns unto the Mortgagees,

FIRST, ALL the annual income to arise during the life of the Borrower from the investments mentioned in the Schedule hereto, or from the varied investments for the time being representing the same, and ALL other (if any) the annual income to which the Borrower is now or may hereafter become entitled under the said Settlement (*g*) :

AND SECONDLY, ALL THAT policy of assurance, &c. (*as in clause 2 of Precedent II. of this Group*),

TO HAVE AND RECEIVE the same unto the Mortgagees, subject to the proviso for redemption hereinafter contained :

Proviso for redemption.

3. PROVIDED ALWAYS (*Forms Nos. 9 and 9B, saying assigned and reassigned*).

Covenant by Borrower to keep up policy.

4. THE Borrower hereby covenants with the Mortgagees and with each of them in manner following (that is to say) :— (*Form No. 21*).

Power to surrender policy to Company.

5. PROVIDED ALWAYS, that any policy (*continue as in Form No. 22*).

6. PROVIDED ALWAYS that upon any sale &c. (*Form No. 15*).

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Particulars of investments.

Reversionary life interest.

(*g*) If he is entitled to a reversionary life interest in the wife's fund and this is to be excluded, add here :—“other than under the trusts affecting the wife's trust fund thereby settled.”

If the reversionary life interest is to be included, it should be mentioned in the recitals and parcels, also the Schedule should state the investments representing that fund in a separate part.

## No. V.

WARRANT of ATTORNEY to confess JUDGMENT as a  
COLLATERAL SECURITY for payment of money secured by  
MORTGAGE of a POLICY OF ASSURANCE (h).

To E. F., of, &c., and G. H., of, &c., solicitors of His Majesty's Supreme Court of Judicature, jointly and severally, or to any other solicitor of the same Court.

THESE ARE TO DESIRE AND AUTHORISE you, the solicitors above named, or either of you, or any other solicitor of the said

Warrant of attorney to confess judgment.

(h) A warrant of attorney to confess judgment is sometimes given as a collateral security for a mortgage debt. The judgment is generally for double the amount of the principal sum to be secured, and the warrant is accompanied by a defeasance showing the object of the transaction.

The Debtors Act, 1869, provides that a warrant of attorney to confess judgment in any personal action or *cognovit actionem* given by any person shall not be of any force unless there shall be present some attorney of one of the superior Courts on behalf of such person expressly named by him, and attending at his request to inform him of the nature and effect of such warrant or cognovit before the same is executed, which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney: s. 24; and a warrant of attorney not executed in manner aforesaid shall not be rendered valid by proof that the person executing the same did in fact understand the nature and effect thereof, or was fully informed of the same: s. 25. S. 26 provides that where in an action a warrant of attorney to confess judgment is given, and the same or a true copy thereof is not filed in the Central Office within twenty-one days after the execution thereof, as required by 3 Geo. 1, c. 39, the same shall be deemed fraudulent and void; and if any such warrant of attorney was given subject to any defeasance or condition, such defeasance or condition shall be written on the same paper or parchment with the warrant before the filing thereof, otherwise the warrant shall be void.

Statutory provisions as to warrants of attorney.

By the Judicature Act, 1873, s. 87, all persons admitted as solicitors, attorneys or proctors, are to be called solicitors of the Supreme Court of Judicature.

The judgment to be entered up under the warrant of attorney should be registered and re-registered every five years, as required by the Judgment Acts, in order to give it priority over other debts.

The above warrant of attorney being a collateral security, the stamp on it will be 6d. for every £100 of the principal sum secured, but subject to a maximum of 10s., see Stamp Act, 1891, Schedule, "Mortgages"; Revenue Act, 1903, s. 7.

Court, to appear for me, A. B., of, &c., in the High Court of Justice (King's Bench Division), in an action of debt for £—— for money lent, at the suit of C. D., of, &c., and thereupon to confess the said action, or suffer a judgment to pass against me in the same action, and to be thereupon forthwith entered up against me of record of the same Court for the sum of £—— and costs of suit :

AND I, the said A. B., hereby further authorise and empower you or any one of you, after the said judgment shall be entered up as aforesaid, for me and in my name, and as my act and deed, to sign, seal and execute a good and sufficient release in the law to the said C. D. of all and all manner of errors, defects and imperfections whatsoever made, committed, done or suffered, or to be made, committed, done or suffered in, about or concerning the aforesaid judgment, or the proceedings relating thereto :

AND whatsoever you, or any one of you, shall do or cause to be done in the premises, or any of them, this shall be to you and to every of you a sufficient warrant or authority :

AND I DECLARE that I have expressly named L. M., of, &c., a solicitor of the Supreme Court aforesaid, and requested him to attend on my behalf to inform me of the nature and effect of this instrument.

IN WITNESS whereof I have hereunto set my hand and seal the —— day of ——, 19——.

A. B.

SIGNED, sealed and delivered by the said A. B. in the presence of L. M., of ——, in the County of ——, one of the solicitors of His Majesty's Supreme Court of Judicature. And I, the said L. M., declare that I am the solicitor for the said A. B. expressly named by him and attending at his request, and that I have informed him of the nature and effect of the above-written instrument before his execution thereof, and that as his solicitor I subscribe my name as a witness to the due execution hereof.

L. M. (*Signature of defendant's solicitor.*)

## No. VI.

DEFEASANCE *to be indorsed on the* WARRANT of ATTORNEY  
*in last Precedent.*

WHEREAS by an Indenture bearing even date with the within-written warrant of attorney, and made between (*parties*) in consideration of the sum of £—— paid by the said C. D. to the said A. B., the said A. B. has assigned a policy of assurance on his life for the sum of £——, effected in the — Assurance Office, and numbered —, and the money thereby assured, unto the said C. D. by way of security for the payment of the sum of £——, with interest thereon at the rate of £— per cent. per annum, on the — day of — next: AND the said Indenture contains covenants by the said A. B. for the payment of the said principal sum of £——, and the interest thereon, and to keep on foot the said policy, and to effect a new policy in case the subsisting policy shall become void, and to repay to the said C. D. all money (if any) paid by him in or about the keeping on foot the said policy or in effecting or keeping on foot any such new policy as aforesaid :

Recital of  
Mortgage of  
policy.

NOW BE IT REMEMBERED, that the within-written warrant of attorney is given as a collateral security for the payment of the principal money and interest secured by the said Indenture :

Defeasance on  
payment of  
principal  
money and  
interest  
secured by  
Mortgage.

AND IT IS HEREBY DECLARED that no execution shall be issued or taken out upon the judgment or judgments to be confessed in pursuance of the said warrant of attorney, unless and until default shall be made in payment of the principal money and interest secured by the said Indenture, or some part thereof respectively, contrary to the true intent and meaning of the said Indenture: AND that in case default shall be made in payment of the said principal money and interest, or any part thereof respectively, contrary to the true intent and meaning of the said Indenture, then and in such case it shall be lawful for the said C. D., his executors, administrators or assigns, to sue out such execution or executions, or other process, upon or by virtue of the said judgment or judgments, or any of them, as he or they shall think fit or be advised for the recovery of such principal

money and interest respectively, and all costs, charges and expenses which he or they shall sustain or incur by reason of the non-payment of such principal money and interest respectively, or any part thereof: AND also that after the full payment to the said C. D., his executors, administrators or assigns, of the said principal money and interest, and of all such costs, charges and expenses as aforesaid, the said C. D., his executors, administrators or assigns, shall and will on the request and at the cost and charges of the said A. B., his executors or administrators, acknowledge satisfaction of the said judgment or judgments upon the record or records thereof, in due form of law, and do all further or other acts, matters or things, which may be reasonably required for releasing and extinguishing all right and remedy upon the said judgment or judgments, and all executions thereupon respectively.

IN WITNESS, &c.

#### No. VII.

#### ASSIGNMENT *of a Policy of Assurance by way of ADDITIONAL SECURITY.*

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part :

Supplemental to principal Mortgage.

WHEREAS these presents are supplemental to an Indenture of Mortgage (hereinafter called the Principal Indenture) dated, &c., and made, &c., whereby certain policies of assurance effected on the life of the Borrower were assigned by him unto the Mortgagee by way of mortgage for securing the payment to the Mortgagee of the sum of £3,000, with interest thereon at the rate of £5 per cent. per annum :

That money remains due.

AND WHEREAS the said sum of £3,000 remains owing on the security of the Principal Indenture :

Title to policy.

AND WHEREAS the Borrower is now entitled to the further policy of assurance effected in his own name and on his own life hereinafter mentioned and assigned :

Agreement to give further security.

AND WHEREAS the Borrower has agreed to assign the said policy to the Mortgagee by way of further security in manner hereinafter appearing :

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £3,000 remaining owing as aforesaid, the Borrower, As Beneficial Owner, hereby assigns unto the Mortgagee:

Assignment of further policy to Mortgagee.

ALL THAT, &c. (*continue as in clause 2 of Precedent II. of this Group, p. 907, sup.*),

To HOLD unto the Mortgagee, subject to the like right of redemption as is now subsisting under the Principal Indenture in respect of the policies of assurance thereby assigned.

Habendum.

2. ALL the covenants, powers and provisions contained in the Principal Indenture shall extend and apply to the policy hereby assigned, as if corresponding covenants, powers and provisions had been inserted in these presents: AND in the event of any money being paid by the Mortgagee or the persons deriving title under him in respect of the policy hereby assigned, or of any policy to be substituted therefor, by reason of the default of the Borrower to pay such money, then the policies and premises comprised in the Principal Indenture, and any policy or policies substituted for the same, shall, as well as the policy hereby assigned, stand charged with the repayment of such money and the interest thereon.

Provisions in original Mortgage to extend to this policy.

IN WITNESS, &c.

### No. VIII.

MORTGAGE of an EQUITABLE ESTATE in REMAINDER, where a RENT-CHARGE is limited to a TRUSTEE for the MORTGAGEES to enable them to REGISTER the SECURITY under the JUDGMENTS ACT, 1855 (i).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the 1st part, M. N., of, &c.

Parties.

(i) This Act (18 & 19 Vict. c. 15, s. 12) provides that any rent-charge granted, otherwise than by marriage settlement, for one or more lives, or for any term of years or greater estate determinable on one or more lives, shall not affect any land as to purchasers, mortgagees, or creditors unless a memorandum containing the name, address, and description of the person whose estate is intended to be affected and the date of the deed whereby the rent-charge is granted and the annual sum to be paid shall be left with the

Registration of rent-charge granted by way of mortgage.

(hereinafter called the Trustee), of the 2nd part, and C. D., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees), of the 3rd part :

**Recital of Will.** WHEREAS X. Y., deceased, being at his death seised in fee simple in possession free from incumbrances of the hereditaments herein-after described, duly made his Will dated the — day of —, and thereby, after appointing O. P. and R. S. to be his executors and trustees, devised to them all his real estate (including the hereditaments hereinafter described), Upon trust to pay the rents and profits thereof to K. L. (who was born on the — day of —) during his life, and after his death to hold all the said real estate In trust for the Borrower and his heirs :

**Death of testator, &c.** AND WHEREAS the said testator died on the — day of —, without having revoked or altered his said Will, which was on the — day of — duly proved at the — Probate Registry by the executors therein named (*k*) who on the — day of — assented to the recited devise :

**Agreement for advance.** AND WHEREAS (*Form No. 2A*) :

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows :—

**Covenant to pay principal and interest.** 1. In pursuance, &c. (*Forms Nos. 3, 4 and 6*).  
2. For the consideration aforesaid the Borrower, As Beneficial Owner, hereby conveys unto the Mortgagees

**Conveyance of land limiting a rent-charge.** ALL THOSE, &c. (*see Forms, Sect. II., Purchase Deeds*),

To hold unto the Mortgagees in fee simple subject to the life estate therein of the said K. L.,

To the use that the said M. N., his heirs and assigns, may receive out of the premises an annual rent-charge of £—, to

Master of the Court of Common Pleas, now at the Land Registry, see the Land Charges Act, 1900.

In the case given in the text the remainderman has only an equitable estate. The limitation of a rent-charge enables the mortgage to be registered ; this fixes a purchaser with notice of the mortgage and so protects the mortgagees.

The rent-charge is not required in a first mortgage of a legal remainder, as the mortgagee obtains the legal estate, but he should give notice to the S. L. Act trustees.

**Mortgage of a legal remainder.**

(*k*) Notice of this mortgage should be given to the trustees of the Will. This mortgage and the rent-charge would be overreached by a sale by the tenant for life under the S. L. Acts, but the mortgage would attach to the capital money. An assent is required if the testator died after 1897 : L. T. Act, 1897, Part I.

commence from the death of the said K. L. and to accrue from day to day but to be paid half-yearly (the first payment to be made six calendar months after the death of the said K. L.) in each year during the lives and life of the Mortgagees and the survivors and survivor of them, the said rent-charge to be held IN TRUST for the Mortgagees, and to be accepted towards satisfaction of the interest hereinbefore covenanted to be paid, and to be subject to the proviso for redemption hereinafter contained, and subject to the said rent-charge, To THE USE of the Mortgagees in fee simple subject to the proviso for redemption hereinafter contained.

3. PROVIDED ALWAYS (*Forms Nos. 9 and 9E*).

4. THE Borrower hereby covenants with the Mortgagees and with each of them that upon the death of the said K. L. the Borrower or the persons deriving title under him will forthwith discharge all duties which may become payable in respect of the premises and produce to the Mortgagees or the persons deriving title under them such evidence of such discharge as they may reasonably require, and will at all times hereafter keep indemnified the Mortgagees and the persons deriving title under them from all interest and claims in respect of such duties.

Proviso for redemption.  
Covenant to pay death duties.

5. (*Accumulation clause, Form No. 35.*)

6. (*Add Forms Nos. 15 and 49 and other special clauses as required.*)

IN WITNESS, &c.

## NO. IX.

MORTGAGE of REVERSIONARY INTEREST in a Share of personal estate under a Will,—COVENANT by the FATHER of MORTGAGOR to pay the INTEREST by way of ADDITIONAL SECURITY (*l*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the 1st part, C. B., of, &c. (*A. B.'s father*), of the 2nd part, and G. H., of, &c. (hereinafter called the Mortgagee), of the 3rd part:

Parties.

WHEREAS under the Will of L. M., deceased, dated the — day of —, and duly proved in the — Probate Registry

Recital of Will under which Borrower is

(*l*) Notice of this deed should be given to the trustees of the Will, see first note to Prec. IV. of this Group, p. 911, *sup*.

entitled to one-third of personal estate.

on the — day of —, and of which X. and Y. are the present trustees, the Borrower is entitled to one equal third share of the residuary personal estate of the said L. M., deceased, in reversion expectant on the death or remarriage (which first happens) of K. L. (who was born on the — day of —), which residuary personal estate is now represented by the investments mentioned in the Schedule hereto and standing in the names of the said trustees (m) :

Agreement for advance.

AND WHEREAS (*Form No. 2A*) :

NOW THIS INDENTURE WITNESSETH as follows :—

Covenant to pay principal and interest.

Assignment of reversionary share.

1. IN pursuance, &c. (*Forms Nos. 3, 4, and 6*).

2. For the consideration aforesaid the Borrower As Beneficial Owner, hereby assigns unto the Mortgagee

ALL THAT the reversionary one-third share or other the share or interest of the Borrower under the said Will of the said L. M., deceased, in the investments mentioned in the Schedule hereto, and in all other (if any) the residuary personal estate of the said L. M., deceased, and the proceeds thereof, and the investments for the time being representing the same,

To HOLD unto the Mortgagee absolutely, subject to the proviso for redemption hereinafter contained :

Proviso for redemption.

3. PROVIDED ALWAYS (*Forms Nos. 9 and 9B, saying assigned and reassigned*).

Covenant by father of Borrower to pay the interest in case of default.

4. THE said C. B. hereby covenants with the Mortgagee that if the Borrower, or the persons deriving title under him, shall fail to pay the interest on the said sum of £—, or any part thereof, for at least fourteen days next after the respective days hereinbefore fixed for the payment thereof, the said C. B. will on demand pay the interest on the said sum of £—, or so much thereof as the Borrower, or the persons deriving title under him, shall have failed to pay as aforesaid.

5. (*Form No. 38, surety to be liable as principal debtor as regards the interest*).

6. (*Accumulation clause, Form No. 35.*)

7. (*Covenant to pay duty as in clause 4 of last Precedent.*)

8. (*As to power of sale, Form No. 15.*)

(*Add special clauses as required.*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Mortgage of funds in Court.

(m) If the funds are in Court this should be recited, and Form No. 36 should be added.

## No. X.

MORTGAGE *by* TENANT FOR LIFE *and* REVERSIONER *of their*  
*interests in a* RESIDUARY ESTATE *under a* WILL. *The*  
 REVERSIONER *joins as* SURETY *(n).*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*widow*) Parties,  
 (hereinafter called the Borrower), of the 1st part, C. B., of, &c.  
 (*surety*), of the 2nd part, and E. F., of, &c. (hereinafter called the Recital of Will  
 Mortgagee), of the 3rd part (*Recite Will of G. B., whereby, after of testator, his  
 making certain devises and bequests, he gave all the residue of his real death, probate  
 and personal estate to trustees upon trust for sale and conversion, to and assent.  
 invest proceeds, and pay income to the Borrower, his wife, for her life,  
 and on her death, as to capital and income, In trust for children who  
 attain twenty-one, or in case of daughters marrying, in equal shares—  
 Death of testator and probate of his Will—Assent by executors):*

AND WHEREAS there were issue of the said G. B. two children That testator  
 and no more, of whom the said C. B. (who was born on the ——— had issue two  
 day of ———) is one : children, and  
 that rever-  
 sioner is one.

AND WHEREAS D. B., the other child of the said marriage, died Death of  
 an infant [and without having been married] on the ——— day of infant.  
 ———, 19—:

AND WHEREAS particulars of the property and investments now Reference to  
 representing the residuary real and personal estate of the testator Schedule.  
 are contained in the Schedule hereto, and the same are now  
 standing in the joint names of ——— as the present trustees of  
 the said Will :

AND WHEREAS the Mortgagee, at the request of the Borrower, Agreement for  
 and also of the said C. B., has agreed to advance to the Borrower advance.  
 the sum of £——, on having the repayment thereof, with  
 interest as hereinafter mentioned, secured in manner hereinafter  
 appearing :

NOW THIS INDENTURE WITNESSETH and it is hereby  
 agreed as follows :—

1. IN pursuance of the said agreement and in consideration of Joint and  
 the sum of £—— now paid by the Mortgagee to the Borrower (*the several cove-  
 receipt &c.*), the Borrower and the said C. B. hereby jointly and nants by  
 severally covenant with the Mortgagee, &c. (*Forms Nos. 4 and 6*). tenant for life  
 and rever-  
 sioner to pay  
 principal and  
 interest

(n) Notice of this deed should be given to the trustees of the Will, see first note to Prec. IV. of this Group, p. 911, *sup.*

Tenant for life and reversioner assign life interest and reversion.

2. For the consideration aforesaid each of them, the Borrower and the said C. B., As Beneficial Owner, according to her and his respective interest, hereby assign unto the Mortgagee,

FIRST, ALL the income payable to the Borrower during her life under the said Will of the said —, deceased, in respect of the property and investments mentioned in the Schedule hereto and other the residuary real and personal estate thereby devised and bequeathed, and the proceeds of sale thereof and the investments for the time being representing the same,

AND SECONDLY, ALL that the interest of the said C. B. under the said Will in reversion expectant on the death of the Borrower in the same property, residuary real and personal estate, proceeds and investments :

To HOLD unto the Mortgagee absolutely, subject to the proviso for redemption hereinafter contained.

Proviso for redemption.

3. PROVIDED ALWAYS, that on payment on the — day of —, by the Borrower or the said C. B., or the persons respectively deriving title under them, to the Mortgagee, or the persons deriving title under him, of the said sum of £—, with interest thereon from the date hereof at the rate of £— per cent. per annum, the premises hereinbefore assigned shall at the request and cost of the Borrower and the said C. B., or the persons respectively deriving title under them, be duly reassigned to her, him or them, according to their respective interests therein.

Order of liability.

4. PROVIDED ALSO, that as between the Borrower and the premises first hereby assigned on the one hand, and the said C. B. and the premises secondly hereby assigned on the other hand, the Borrower and the premises first hereby assigned shall be primarily liable for the payment of the principal money and interest hereby secured, but this provision shall not affect the rights and remedies of the Mortgagee or the persons deriving title under him or the enforcement thereof in such order and manner as he or they may think fit.

Surety to be liable as principal debtor.

5. PROVIDED ALSO, that without prejudice (*continue as in Form No. 38*).

6. PROVIDED ALWAYS that upon any sale &c. (*Form No. 15*).

7. (*Add covenant by C. B. to pay duties on death of Borrower, as in clause 4, Precedent VIII., of this Group*)

(*If there is any real estate remaining unsold, add Form No. 49, as to duties on land values*).

IN WITNESS, &c.

(*Add schedule giving particulars of residuary estate.*)

## No. XI.

MORTGAGE *of a REVERSIONARY INTEREST and of a POLICY OF ASSURANCE on the LIFE of the MORTGAGOR. INTEREST in arrear to be converted into PRINCIPAL, the MORTGAGEE not to CALL IN MONEY until either POLICY or REVERSIONARY INTEREST falls in (o).*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part :

Parties.

WHEREAS, &c. (*Recite Will under which the Borrower is entitled to a share of the testator's residuary estate held on trust for sale in reversion expectant on the death of X. Y., and death of testator and probate of Will and assent*) :

Recital of Will.

AND WHEREAS particulars, &c. (*as in third recital of last Precedent*).

AND WHEREAS the Borrower is also entitled to the policy of assurance effected in his own name and on his own life hereinafter mentioned and assigned :

Title to policy.

AND WHEREAS (*Form No. 2A*) :

Agreement for advance.

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows :—

1. IN pursuance, &c. (*Forms Nos. 3, 4 and 6*).

Covenant to pay principal and interest.

2. FOR the consideration aforesaid the Borrower, As Beneficial Owner, hereby assigns unto the Mortgagees,

FIRST, ALL THAT (*reversionary share ; see Form No. 23, Purchase Deeds, Sect. II., p. 314, sup.*),

AND SECONDLY, ALL THAT (*policy ; see Form No. 22, Purchase Deeds, Sect. II., p. 313, sup.*),

TO HAVE AND RECEIVE the same unto the Mortgagees absolutely, subject to the proviso for redemption hereinafter contained.

3. PROVIDED ALWAYS (*Forms Nos. 9 and 9B*).

Proviso for redemption.

4. THE Borrower hereby covenants with the Mortgagees and

Covenant by Borrower to keep up policy.

(o) Notice of this mortgage should be given to the trustees of the Will and to the assurance company, see first note to Prec. IV. of this Group, p. 911, *sup.*

The *ad valorem* stamp must be sufficient to cover the sum lent and the estimated amount which may possibly be added for capitalized interest.

Power to  
surrender  
policy to  
Company.

Accumulation  
clause in  
respect of  
interest in  
arrear.

Mortgage not  
to be called in  
till reversion  
or policy  
falls in.

with each of them in manner following (that is to say):—(*continue as in Form No. 21*).

5. PROVIDED ALWAYS, that any policy (*continue as in Form No. 22*).

6. THE Borrower hereby also covenants with the Mortgagees (*Form No. 35*).

7. (i.) THE Mortgagees or the persons deriving title under them shall not (so long as the foregoing covenants as to the said policy are duly performed), until either the reversionary interest hereinbefore assigned falls into possession or until the death of the Borrower (which first happens), require payment of the principal money hereby secured or any part thereof:

(ii.) THE Borrower shall allow the whole of the principal money hereby secured to remain on this security until the Mortgagees become entitled to require payment thereof as aforesaid :

(iii.) PROVIDED (*continue as in Form No. 33*).

8. (*Add Form No. 15 ; also No. 49 if there is any real estate.*)

IN WITNESS, &c.

(*Add schedule of the residuary estate.*)

No. XII.

MORTGAGE of a REVERSIONARY INTEREST of a Fund in COURT. POWER for MORTGAGEES to obtain a STOP ORDER.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part :

Recital of  
title to  
reversion.

WHEREAS (*Recite Will of G. B., under which the Borrower is entitled to a moiety of the testator's residuary estate in reversion expectant on the death of X. Y.—Death of testator and probate of Will*) :

Of Order of  
Court.

AND WHEREAS under an Order of the Chancery Division of the High Court of Justice made on the — day of —, 19—, by the Honourable Mr. Justice —, in an action entitled In the Matter

of, &c. — *v.* —, 19—, B. No. — (being an action for the administration of the estate of the said testator), the residuary estate of the said testator is now represented by the investments mentioned in the Schedule hereto which are standing in the name of the Paymaster-General of the Chancery Division to the credit of the said action :

AND WHEREAS (*Form No. 2A*) :

Agreement for advance.

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows :—

1. IN pursuance, &c. (*Forms Nos. 3, 4 and 6*).

Covenant to pay principal and interest.

2. FOR the consideration aforesaid the Borrower, As Beneficial Owner, hereby assigns and conveys unto the Mortgagees

Conveyance of reversionary interest.

ALL THAT moiety or other share to which the Borrower is entitled in expectancy as aforesaid under the said Will of G. B., deceased, or otherwise in the investments mentioned in the Schedule hereto, and in all the trust funds, securities and other property at any time hereafter representing the same or any part thereof, and in the income of the premises,

Parcels.

TO HOLD unto the Mortgagees absolutely or in fee simple, according to the nature of the property, subject to the proviso for redemption hereinafter contained.

3. PROVIDED ALWAYS (*Forms Nos. 9 and 9B, saying conveyed and assigned and reconveyed and reassigned*).

Proviso for redemption.

4. THE Borrower hereby covenants with the Mortgagees and with each of them (*continue as in Form No. 35*).

Accumulation clause in respect of interest in arrear.

5. THE Mortgagees may at the cost of the Borrower forthwith apply for and obtain a proper order in the said action that no part of the investments mentioned in the Schedule hereto shall be sold or dealt with without notice to the Mortgagees, and upon such application may use the name of the Borrower as concurring in or consenting to the same.

Power to obtain stop order.

6. THE Borrower hereby also covenants with the Mortgagees and with each of them that he will on demand (*Form No. 36*).

Covenant by Borrower to pay costs of obtaining stop order, &c.

7. PROVIDED ALWAYS that upon any sale &c. (*Form No. 15*).

(*If there is any real estate add Form No. 49, as to duties on land values. Also covenant to pay duties on death of X. Y., the tenant for life, as in clause 4, Precedent VIII., p. 919, of this Group.*)

(*Add definition clause, Form No. 50.*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

## No. XIII.

MORTGAGE *of a REVERSIONARY INTEREST in PROPERTY to secure a SUM payable on the REVERSION FALLING INTO POSSESSION in consideration of a PRESENT PAYMENT by the MORTGAGEES of a SUM agreed as the PRESENT VALUE of the REVERSIONARY SUM secured (p).*

Parties.

THIS INDENTURE, made, &c. (*Parties and recital of Will under which Borrower is entitled to reversionary share in property in schedule expectant on the death of X. Y., as in the last Precedent*):

Agreement for purchase by Mortgagees of reversionary sum in consideration of present payment, and for securing future payment.

AND WHEREAS it has been agreed between the parties hereto that the Mortgagees shall purchase a sum of £—, payable at the expiration of three calendar months after the death of the said X. Y., in consideration of the immediate payment of £—, and that the payment of the said sum of £— shall be secured in manner hereinafter appearing :

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows :—

Covenant by Borrower to pay principal sum on reversion falling into possession, and in default to pay interest.

1. IN pursuance of the said agreement and in consideration of the sum of £— now paid by the Mortgagees out of money belonging to them on a joint account to the Borrower (the receipt of which sum the Borrower hereby acknowledges), the Borrower hereby covenants to pay to the Mortgagees at the expiration of three calendar months after the death of the said X. Y. the sum of £— (*i.e., a larger sum than the amount advanced*), but without interest in the meantime: AND if the said principal sum shall not be fully paid on the day on which the same ought to be paid under the foregoing covenant, then to pay to the Mortgagees interest on the said principal sum or on so much thereof as shall for the time being remain unpaid at the rate of £— per cent. per annum, from that day until the said principal sum shall be fully paid by equal half-yearly payments, the first half-yearly payment to be made at the end of nine calendar months from the death of the said X. Y.

Assignment of reversionary interest to secure money covenanted to be paid.

2. (*Assignment of reversionary share to Mortgagees, see last Precedent*):

---

(p) It is conceived that this instrument is subject to an *ad valorem* conveyance stamp (£1 per £100) on the amount paid by the mortgagees as purchase-money, see Stamp Act, 1891, s. 60; Fin. (1909-10) Act, 1910, s. 73.

3. PROVIDED ALWAYS, that if the said principal sum of £—— shall be paid on the day on which the same ought to be paid under the foregoing covenant in that behalf, the premises shall at the request and cost of the Borrower or the persons deriving title under him be duly reassigned to him or them.

Proviso for redemption.

(Add Form No. 15 and special clauses as required.)

IN WITNESS, &c.

(Add schedule.)

#### No. XIV.

GRANT of a REVERSIONARY ANNUITY subject to a provision for RE-PURCHASE in consideration of the immediate payment of a CAPITAL SUM.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, L., of, &c., M., of, &c., N., of, &c., and O., of, &c., the Estate Trustees of the — Assurance Society, a memorial of whose names has been duly enrolled in the Central Office of the Supreme Court of Judicature, pursuant to the said Society's Act, 18— (and which four persons are hereinafter called the Estate Trustees), of the 2nd part, and C. D., of, &c. (*a trustee for the Society*), of the 3rd part :

Parties.

(Recite title of Vendor under Will of X. Y. to reversionary life interest in investments in schedule expectant on death of E. F., who has the first life interest):

Title of Vendor

AND WHEREAS the Vendor has agreed in consideration of receiving from the Estate Trustees the sum of £—— to secure to them the payment of the annual sum of £—— hereinafter granted, subject to such right as hereinafter conferred for the re-purchase of the said annual sum :

Agreement for sale subject to power to repurchase.

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Estate Trustees to the

Grant of contingent reversionary annuity.

Vendor (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby grants unto the Estate Trustees:

Parcels.

ONE annual sum of £——, to commence on the day when by the death of the said E. F. or otherwise the Vendor, if then living, shall become entitled in possession to the income of the investments mentioned in the Schedule hereto, or the investments for the time being representing the same or any part thereof, and to be paid thenceforth during the residue of the life of the Vendor by equal half-yearly payments, the first half-yearly payment to be made at the expiration of six calendar months from the date when the Vendor shall become entitled in possession as aforesaid, but the said annual sum, though payable half-yearly, shall be deemed to accrue due from day to day, and shall be charged upon

Charge.

ALL the annual income to which the Vendor is entitled in expectancy as aforesaid during his life arising from the investments mentioned in the Schedule hereto, or any other investments subject to the trusts of the recited Will of the said X. Y., deceased, or the investments for the time being representing the same.

TO HAVE AND RECEIVE the said annual sum unto the Estate Trustees during the life of the Vendor.

Covenant to pay the annuity.

2. THE Vendor hereby covenants with the Estate Trustees to pay to them the said annual sum of £—— in manner and at the times in and at which the same is hereinbefore made payable.

Assignment of reversionary income to Trustee.

3. FOR the consideration aforesaid the Vendor, As Beneficial Owner, hereby conveys and assigns unto the said C. D.

ALL the annual income to which the Vendor is entitled in expectancy as aforesaid arising from the investments mentioned in the Schedule hereto, or any other investments subject to the trusts of the recited Will, or the lands or other investments for the time being representing the same.

TO HAVE AND RECEIVE the same unto the said C. D.,

Trusts of reversionary income.

UPON the trusts hereinafter declared (that is to say), Upon trust to receive the same income when the same falls into possession, and to pay thereout from year to year to the Estate Trustees during the residue of the life of the Vendor the said annual sum of £—— hereby granted to the Estate Trustees, and, subject to paying the same, to permit the Vendor to receive the said annual income.

4. PROVIDED ALWAYS, that the said C. D. may, if he thinks fit, allow the Vendor to receive all the said annual income as it accrues due, and shall not be concerned to enforce the payment of the said annual sum by means of the trusts aforesaid, unless and until required in writing so to do by or on behalf of the Estate Trustees.

Power to  
Trustee to  
permit Vendor  
to receive  
reversionary  
income.

5. PROVIDED ALSO, that if at any time after the death of the said E. F. the Vendor shall be desirous of re-purchasing the said annual sum of £—— hereinbefore granted, and shall give to the Estate Trustees or the persons deriving title under them one calendar month's previous notice of such his desire, and shall upon the expiration of such notice or at any time thereafter pay to the Estate Trustees or the persons deriving title under them the sum of £—— and all arrears of the said annual sum up to the day of payment, together with all sums then due to or incurred by the Estate Trustees or the persons deriving title under them for the costs and expenses in recovering or enforcing payment of the said annual sum, then and in that case the Estate Trustees or the persons deriving title under them shall accept the said sum of £—— for the re-purchase of the said annual sum, and shall, at the request and cost of the Vendor or the persons deriving title under him, release and re-convey the said annual sum and the securities for the same to him or them.

Power to  
Vendor to  
re-purchase.

6. PROVIDED FURTHER, that on any re-purchase of the said annual sum the Estate Trustees or the persons deriving title under them shall, at the like request and cost, deliver or assign to the Vendor or the persons deriving title under him, for his and their absolute use and benefit, a non-profit policy on his life effected with the — Assurance Society for the sum of £——, maintainable thereafter at the annual premium of £——, payable on the same day in each year as the date of completion of the re-purchase.

Estate  
Trustees to  
deliver a  
policy on the  
life of the  
Vendor to  
him if he  
re-purchases.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

GROUP C.—MORTGAGES OF LEGACIES, STOCKS AND SHARES, AND  
PARTNERSHIP ASSETS.

No. I.

MORTGAGE *of a* LEGACY.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part :

WITNESSETH as follows :—

Borrower  
assigns legacy  
to Mortgagee,

1. IN consideration, &c. (*Forms Nos. 3, 4, and 6*).

2. For the consideration aforesaid the Borrower, As Beneficial Owner, hereby assigns unto the Mortgagee

ALL THAT the legacy of £—— bequeathed to the Borrower by the Will of X. Y., deceased, dated the —— day of ——, and proved in the —— Probate Registry on the —— day of ——, by L. M. and N. O., the executors thereof, and which legacy remains unpaid [*or and which legacy is made payable under the said Will on the death of P. Y., who was born on the —— day of ——*],

Upon trust to  
apply same in  
payment of  
principal,  
interest and  
costs, and to  
pay surplus  
to Borrower.

To HOLD unto the Mortgagee for securing payment of the said principal sum and interest, and so that the Mortgagee and the persons deriving title under him shall have power to receive the said legacy, and to give a valid receipt for the same ; And in that case he or they shall out of the said legacy pay in the first place the expenses incurred in or about the obtaining payment thereof, and in the next place pay and retain the said sum of £—— and the interest thereon, or so much thereof (if any) as shall then remain due, and shall pay the surplus (if any) of the said legacy to the Borrower.

[3. *If the legacy is reversionary add and adapt Form No. 35. Also if the legacy is subject to duties add a covenant by the Borrower to pay them.*]

IN WITNESS, &c. (*q*).

Mortgage of  
reversionary  
legacy.  
Notice.

(*q*) This Precedent may be adapted to a mortgage of a reversionary legacy by altering the parcels.

Notice of the mortgage should be given to the executors.

## No. II.

MORTGAGE *of* RAILWAY STOCK *or* SHARES.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part : Parties.

WHEREAS (*Form No. 2A*) :

AND WHEREAS, with a view to the intended security, the Borrower has by a Transfer (*r*) bearing even date with these presents transferred unto the Mortgagee the sum of £—— Consolidated stock of the —— Railway Company [*or* twenty shares of £50 each in the capital of the —— Railway Company, which shares are numbered respectively (*state the Nos. of the shares*)] : Agreement for advance.  
Recital of transfer of railway shares by Borrower to Mortgagee.

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows :—

1. IN pursuance, &c. (*Forms Nos. 3, 4, and 6*).

2. PROVIDED ALWAYS, that on payment on the —— day of —— next by the Borrower or the persons deriving title under him of the sum of £——, with interest thereon from the date hereof at the rate of £— per cent. per annum, the said stock [shares] shall, at the request and cost of the Borrower or the persons deriving title under him, be duly re-transferred to him or them. Covenant to pay principal and interest.  
Proviso for redemption.

3. THE power of sale conferred by the Conveyancing and Law of Property Act, 1881, shall apply to this security, but without Power of sale (s).

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(*r*) Under the Companies Clauses Act, 1845, a transfer of railway shares is to be kept by the secretary of the company, and the company is not bound to notice trusts, express or implied, see ss. 14, 15, 20. Hence, upon a mortgage of railway shares the mortgagor should make an absolute transfer of them to the mortgagee for a nominal consideration, according to the form in the schedule to the Act, accompanied by a deed explaining the object of the transfer as above. This species of mortgage gives to the mortgagee an absolute control over and power of dealing with the shares as they stand in his name only, and he will be the person to receive the dividends; but he may, by power of attorney or letter of direction, authorise the mortgagor or his bankers to receive them. The mortgagor should, however, give a notice to the company in lieu of a *distringas*. Transfer of railway shares.

(*s*) A mortgagee of shares (the mortgage not being by deed) has an implied power to sell if the money is not paid at the appointed day, or, if no day is appointed, then on the expiration of a reasonable notice: *Deverges v. Sandeman*, 1902, 1 Ch. 579; 71 L. J. Ch. 328; and see *Stubbs v. Slater*, As to right of mortgagee of shares to sell.

the restrictions imposed on the exercise thereof by section twenty of the said Act.

IN WITNESS, &c.

### No. III.

#### MORTGAGE *of a SHARE in a PARTNERSHIP BUSINESS* (t).

Parties.

THIS INDENTURE, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part:

Recital of partnership articles, and agreement for advance.

WHEREAS the Borrower carries on in partnership with E. F. the business of — at —, under articles of partnership dated, &c., And by the said articles it is provided, &c. (*Recite provision as to capital and share of profits*):

AND WHEREAS, &c. (*Agreement for advance, Form No. 2A*):

NOW THIS INDENTURE WITNESSETH as follows:—

Covenant to pay principal and interest.

1. IN pursuance, &c. (*Forms Nos. 3, 4, and 6*).

Assignment by Borrower of share in partnership business.

2. For the consideration aforesaid the Borrower, As Beneficial Owner, hereby assigns unto the Mortgagee

ALL THAT the share and interest of the Borrower in the said partnership business and in the property and assets thereof and the profits to arise therefrom,

To HOLD unto the Mortgagee absolutely subject to the proviso for redemption hereinafter contained.

Accounts.

1910, 1 Ch. 632; 79 L. J. Ch. 420. Where the mortgage is by deed, the statutory power seems to apply, and should therefore be qualified, as in the text.

(t) Notice of this mortgage should be given to the firm. A mortgagee cannot, during the continuance of the partnership, require any accounts of the partnership business, nor has he any right to inspect the partnership books without the consent of all the partners, see Partnership Act, 1890, s. 31; *Watts v. Driscoll*, 1901, 1 Ch. 294; 70 L. J. Ch. 157; *Re Garwood's Trusts*, 1903, 1 Ch. 236; 72 L. J. Ch. 208.

Limited partnership.

Under s. 6 (5) (c) of the Limited Partnership Act, 1907, the other partners are not entitled to dissolve the partnership because a limited partner charges his share for his separate debt.

Restriction on assignment.

The mortgagee must inspect the articles to see that there is no covenant against assignment. If there is, the mortgage must be by declaration of trust, with power to remove and appoint a new trustee, unless the other partners concur, as to which see next Precedent.

3. PROVIDED ALWAYS (*Forms Nos. 9 and 9b, saying “assigned” and “reassigned”*). Proviso for redemption.

4. THE Borrower hereby covenants with the Mortgagee that so long as any money remains owing upon the security of these presents the Borrower will from time to time, when required by the Mortgagee or the persons deriving title under him, render to the Mortgagee and the persons deriving title under him such accounts and information relating to the partnership affairs as he or they shall reasonably require, and as the Borrower can lawfully and properly render and give having regard to the said partnership articles and to the provisions of the Partnership Act, 1890. Covenant by Borrower to furnish accounts, &c., so far as he can, having regard to Partnership Act.

IN WITNESS, &c.

#### No. IV.

#### MORTGAGE of a SHARE in PARTNERSHIP BUSINESS (*where the other PARTNER CONCURS*) (*u*).

THIS INDENTURE, made the — day of —, 19—, BETWEEN Parties.  
A. B., of, &c. (hereinafter called the Borrower), of the 1st part,  
E. F., of, &c. (*Borrower's partner*), of the 2nd part, and C. D., of,  
&c. (hereinafter called the Mortgagee), of the 3rd part (*Recitals as in last Precedent, adding*):

AND WHEREAS the said E. F. has agreed to join in these presents in manner hereinafter appearing:— Recital of agreement by partner to join.

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN pursuance, &c. (*Forms Nos. 3, 4, and 6*).

2. FOR the consideration aforesaid the Borrower, As Beneficial Owner, with the consent of the said E. F. (testified by his execution of these presents), hereby assigns, &c. (*Assignment of share, as in last Precedent*). Covenant to pay and assignment of share subject to proviso for redemption.

3. (*Proviso for redemption, as in last Precedent*.)

4. THE Borrower, with the consent of the said E. F. (testified as aforesaid), hereby covenants with the Mortgagee that so long as any money remains due under these presents the Borrower Covenant by Borrower, with consent of partner, to furnish accounts, &c.

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(*u*) The concurrence of the mortgagor's partner removes all difficulty as to the right of the mortgagee to be furnished with accounts and to inspect the partnership books, see *Bonnin v. Neame*, 1910, 1 Ch. 732; 79 L. J. Ch. 388.

will from time to time, when required by the Mortgagee or the persons deriving title under him, render to him or them such accounts and information relating to the said partnership business as he or they may reasonably require, and also will permit him or them to inspect and take copies of the partnership books.

IN WITNESS, &c.

#### SECTION IV.

### EQUITABLE MORTGAGES AND CHARGES BY DEPOSIT.

#### No. I.

MEMORANDUM *under HAND only, accompanying a DEPOSIT of TITLE DEEDS to secure a fixed SUM (x).*

Declaration as to purpose of deposit.

BE IT REMEMBERED (*y*), that I, A. B., of, &c. (*Mortgagor*), have this — day of — deposited with C. D., of, &c. (*Mortgagee*), the documents mentioned in the Schedule hereto, with intent to create an equitable mortgage upon all the property comprised therein, or to which the same relate, for securing the repayment to the said C. D., on the — day of — next, of the sum of £ — this day advanced and paid by him to me [*or the sum of £ — now owing from me to him*], together with interest (*z*)

What provisions in an equitable mortgage render it liable to higher stamp.

(*x*) This instrument is an equitable mortgage as defined by s. 86 (2) of the Stamp Act, 1891, and is chargeable with an *ad valorem* duty of 1s. for every £100, and every fractional part of £100. An equitable mortgage *under seal* must be stamped, like a legal mortgage, with 2s. 6d. for every £100, see *United Realization Co. v. I. R. Commrs.*, 1899, 1 Q. B. 361; 68 L. J. Q. B. 218; and, according to the construction put on the Act by the Commissioners of Inland Revenue, a memorandum under hand only, which purports to confer on the equitable mortgagee powers annexed by law to a mortgage by deed, *e.g.*, the statutory powers of sale, appointing a receiver, &c., is liable to the higher duty, see *Alpe*, 11th ed., 181. If a provision of this kind is desired, it is better to have a legal mortgage or a deed as in Prec. III. of this Group.

(*y*) If preferred, begin “An Agreement made, &c.,” and continue throughout in the third person.

(*z*) Interest is payable whether mentioned or not: *Re Drax*, 1903, 1 Ch. 781; 72 L. J. Ch. 1505.

thereon at the rate of £— per cent. per annum from the date hereof, such interest to continue payable after the said — day of — next, if the said principal sum shall not be paid on that day, by equal half-yearly payments on the — day of — and the — day of — in every year :

AND I agree to execute at my own cost a legal mortgage of the said property to the said C. D. for securing the said principal sum and interest whenever requested so to do.

Agreement to execute legal mortgage (a).

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

## No. II.

MEMORANDUM *under HAND only, accompanying a DEPOSIT of TITLE DEEDS to secure a given SUM and future ADVANCES (b).*

BE IT REMEMBERED, that I, A. B., of, &c. (*Mortgagor*), have this — day of —, 19—, deposited with C. D., of, &c. (*Mortgagee*), the documents mentioned in the Schedule hereto, with intent to create an equitable mortgage on all the property comprised therein, or to which the same relate, for securing the

Declaration as to purpose of deposit.

(a) A mere deposit (with intent to mortgage) without a memorandum gives a right to call for a legal mortgage: *Parker v. Housefield* (1835), 2 My. & K. 419; 4 L. J. Ch. 57. The remedies of the deposittee are for an order for specific performance, sale, or foreclosure, &c.: Seton, 6th ed., 2052.

Remedies of mortgagee by deposit.

The addition of such words as "Such mortgage to contain such powers and provisions and be in such form as the said C. D. may require" does not enable the mortgagee to enlarge the subject-matter of the security or to insert a clause excluding the operation of s. 17 of the Conv. Act, 1881: *Farmer v. Pitt*, 1902, 1 Ch. 954; 71 L. J. Ch. 500.

Form of legal mortgage.

An equitable mortgagee by deposit of title deeds is not entitled to six months' notice or interest in lieu of notice: *Fitzgerald's Trustee v. Mellersh*, 1892, 1 Ch. 385; 61 L. J. Ch. 231; but the borrower is entitled to the usual notice requiring payment: *Parker v. Housefield*, *sup.*

Notice of intention to pay off.

(b) This instrument is chargeable with an *ad valorem* duty of 1s. for every £100, and will be a security in respect of the further advances for such an amount as the additional duty will extend to cover, see notes to the last Precedent.

repayment to the said C. D. on demand of the sum of £—— this day advanced and paid by him to me [*or the sum of £—— now owing from me to him*], and of such further sum or sums of money (if any) as shall hereafter during the continuance of this security be advanced by him to me, together with interest on the principal money for the time being owing on this security at the rate of £— per cent. per annum, computed as to the said sum of £—— from the date hereof, and as to every other principal sum from the date of the advance thereof, and payable half-yearly on the —— day of —— and the —— day of —— in every year :

Agreement to execute legal mortgage.

AND I agree to execute at my own cost a legal mortgage of the said property to the said C. D. for securing all such principal money and interest as aforesaid, whenever requested so to do.

AS WITNESS my hand the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

### No. III.

DEED *to accompany a DEPOSIT of TITLE DEEDS by way of*  
EQUITABLE MORTGAGE *to secure a given SUM [and future*  
ADVANCES](c).

Declaration as to purpose of deposit.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of, &c. (*Mortgagor*), have this —— day of ——, 19—, deposited, &c. (*as in either of last two Precedents, as the case may be, to the end, and then adding as follows*) :

That Mort-gagee shall have statutory powers.

AND that in the meantime and until a legal mortgage is executed as aforesaid the said C. D. and the persons deriving title under him shall have all the powers conferred on mortgagees by the Conveyancing and Law of Property Act, 1881, and that upon any sale by him or them under the statutory power I will at his or their request execute a proper conveyance of all my estate and interest in the property sold for the purpose of vesting the same in the purchaser (d) :

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(c) This instrument will require an *ad valorem* stamp of 2s. 6d. per £100; see the note to Prec. 1. of this Section. If time permits, it is better to take a legal mortgage.

(d) An equitable mortgagee cannot convey the legal estate: *Re Hodson*

AND I irrevocably appoint the said C. D. and the persons deriving title under him, or his or their substitute or substitutes, to be my attorney or attorneys for me and on my behalf and in my name or otherwise to execute any such mortgage or conveyance as I have hereinbefore agreed to execute :

Power of attorney.

AND I ALSO DECLARE that I will during the continuance of this security hold the said property In trust for the said C. D. [his heirs and assigns] subject to my right of redemption, and to convey the same as he or the persons deriving title under him shall in accordance with the provisions herein contained direct :

Declaration of trust,

AND I DECLARE that the said C. D. or other the person or persons entitled for the time being to the money hereby secured may at any time or times by deed remove me or any other person or persons from being a trustee or trustees of the said property under these presents, and may on my death or removal or on the death or removal of any other trustee or trustees appoint a new trustee or new trustees in my, his or their place (e).

and power to appoint new Trustee.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

#### No. IV.

#### MEMORANDUM *under HAND only of* DEPOSIT *of* TITLE DEEDS *with a* BANKING COMPANY *to secure* BALANCE OF ACCOUNT CURRENT (f).

BE IT REMEMBERED, that I, A. B., of, &c. (*Mortgagor*), have this — day of —, 19—, deposited with the — Bank, Limited, the documents mentioned in the Schedule hereto, with intent to create an equitable mortgage upon all property comprised therein, or to which the same relate, for securing the

Declaration as to purpose of deposit.

*and Howe* (1887), 35 Ch. D. 668; 56 L. J. Ch. 755; and *cf. Re Solomon and Meagher* (1889), 40 Ch. D. 508; 58 L. J. Ch. 339, where the sale was made under Lord Cranworth's Act.

(e) See *London and County Bk. v. Goddard*, 1897, 1 Ch. 642; 66 L. J. Ch. 261.

(f) This instrument will be a security for such an amount as the stamp duty at 1s. per £100 will extend to cover, see notes to Prec. I. of this Section.

payment to the said Bank of the balance which shall for the time being be owing from me to the said Bank on my account current with the said Bank for cheques, notes or bills, drawn, accepted or indorsed by me, or for advances made to me, or for my accommodation or benefit or otherwise howsoever (including interest with half-yearly rests, commission and other customary charges), the said balance to be payable by me on demand, or if no demand is made in my lifetime then by my heirs, executors or administrators immediately after my death :

Charge.

AND I also charge the said property with the payment of interest on the said balance from the date of such demand as aforesaid or from the date of my death (whichever shall first happen) at the rate of £— per cent. per annum :

Agreement to execute legal mortgage.

AND I agree to execute at my own cost a legal mortgage of the said property to the said Bank for securing payment of the said balance and interest whenever requested so to do.

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. V.

DEED to accompany DEPOSIT of TITLE DEEDS with BANKERS  
by way of EQUITABLE MORTGAGE to secure BALANCE OF  
ACCOUNT CURRENT (g).

Declaration of purpose of deposit.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of, &c. (*Mortgagor*), have this — day of —, 19—, deposited, &c. (*as in last Precedent to end, and then add as follows*):

Agreement to execute legal mortgage, and that Bankers shall have statutory powers.

AND that in the meantime, and until a legal mortgage is executed as aforesaid, the said Bank shall have all the powers conferred on mortgagees by the Conveyancing and Law of Property Act, 1881, and that upon any sale by the Bank under the statutory power I will at their request execute a proper conveyance of all my estate and interest in the property sold for the purpose of vesting the same in the purchaser :

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(g) This instrument will be a security for such an amount as the stamp duty at 2s. 6d. per £100 will extend to cover. It will generally be better to take a legal mortgage.

AND I irrevocably appoint L. M. and N. O. (being the general managers of the said Bank), and each of them, to be my attorneys or attorney for me and on my behalf and in my name to execute any such mortgage or conveyance as I have hereinbefore agreed to execute, and I authorise the said Bank at any time or times to substitute any other person or persons as my attorney or attorneys for the purposes aforesaid in the place of the attorneys or attorney hereby appointed and from time to time remove any such original or substituted attorney or attorneys:

Power of attorney.

AND I DECLARE that I will hold all my estate and interest in the said property In trust for the said Bank subject to my right of redemption, and to convey the same as the said Bank shall in accordance with the provisions herein contained direct:

Declaration of trust.

AND I DECLARE that the said Bank may, &c. (*Power to appoint new trustee, as in Precedent III. of this Section*).

Power to appoint new trustee.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

## No. VI.

### MEMORANDUM of DEPOSIT of MISCELLANEOUS SECURITIES with a BANKING COMPANY to secure BALANCE OF ACCOUNT CURRENT.

BE IT REMEMBERED, that I, A. B., of, &c. (*Mortgagor*), have this — day of — deposited with the — Bank, Limited, the documents comprised in the Schedule hereto. to the intent that the same and all the property, money and advantages comprised in, secured or represented by, and derivable under such documents shall be a security for the payment to the said Bank of the balance, &c. (*as in Precedent IV. of this Section to the end*).

Declaration as to purpose of deposit.

THE SCHEDULE ABOVE REFERRED TO.

## No. VII.

DEED of EQUITABLE CHARGE to accompany a DEPOSIT of DEEDS to secure a given SUM (*h*). POWER to MORTGAGOR to dispose of PROPERTY until the happening of certain events.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees), of the other part :

WITNESSETH as follows :—

Declaration as to purpose of deposit.

1. THE Borrower hereby declares that the documents relating to the hereditaments situated in the Parish of — (a short description of which hereditaments is contained in the first Schedule hereto, and a list of which documents is contained in the second Schedule hereto) have been deposited by the Borrower with the Mortgagees to secure to the Mortgagees the repayment of the sum of £—— advanced by the Mortgagees out of money belonging to them on a joint account to the Borrower, with interest thereon payable as hereinafter mentioned.

Charge.

2. THE Borrower, As Beneficial Owner, hereby charges the said estate and hereditaments with the repayment of the said sum of £—— and interest.

Covenant to pay principal and interest.

3. THE Borrower hereby covenants to pay to the Mortgagees on the — day of — next the sum of £——, with interest thereon in the meantime at the rate of £4 per cent. per annum from the date of these presents, And also so long as any principal money remains due under these presents after the said — day of — to pay to the Mortgagees interest thereon at the rate aforesaid by equal half-yearly payments on the — day of — and the — day of — in every year.

Covenant to execute legal mortgage.

4. THE Borrower hereby covenants with the Mortgagees and with each of them that the Borrower or the persons deriving title under him will when required, at his or their own cost, execute

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(*h*) The stamp will be 2s. 6d. per £100, see note to Prec. I. of this Section.

and deliver to the Mortgagees or the persons deriving title under them an effectual legal or formal mortgage of the premises in such form and with such covenants by the Borrower or the persons deriving title under him and such powers of sale (express or implied) and other powers and provisions, whether varying the provisions of the Conveyancing and Law of Property Act, 1881, or not, as the Mortgagees or the persons deriving title under them may require for further securing the payment of the principal money and interest hereby secured.

5. FOR the consideration aforesaid the Borrower hereby irrevocably appoints the Mortgagees and each of them and other the person or persons from time to time entitled to the principal money hereby secured, or their or his substitute or substitutes, to be the attorney or attorneys of the Borrower and in his name and on his behalf and as his act and deed or otherwise to sign, seal and deliver or otherwise perfect any such legal or formal mortgage as aforesaid, or (without executing any such mortgage) any deed, assurance or act which may be required or may be deemed proper on any sale by the Mortgagees or the persons deriving title under them of the premises or any part thereof under the statutory power of sale implied by these presents in order to vest in the purchaser or purchasers the legal estate and all other the estate and interest of the Borrower in the premises.

Power of attorney.

6. THE Borrower hereby declares that he or the persons deriving title under him shall henceforth stand possessed of the hereditaments hereby charged, In trust for the Mortgagees in fee simple by way of further security for payment of the said principal money and interest, and that the Mortgagees and the persons deriving title under them shall have power by deed to remove the Borrower or the persons deriving title under him from being trustee or trustees, and upon such removal and on every other occasion to appoint a new trustee or new trustees for the purpose of the trust aforesaid, and as if in the case of removal the trustee removed were dead.

Declaration of trust and power to appoint new trustee.

7. PROVIDED ALWAYS, that until the legal estate in the said hereditaments shall have been got in by the Mortgagees or the persons deriving title under them, either by virtue of a formal mortgage as aforesaid or under the irrevocable power of attorney or the power to appoint new trustees hereinbefore contained, or

Power to Borrower to dispose of property until the happening of certain events.

until the Mortgagees shall have taken possession of the said hereditaments or any part thereof or shall have given notice in writing to the Borrower or the persons deriving title under him determining this present power, it shall not be necessary (*i*) to produce or give notice of these presents to any purchaser or other person who for money or money's worth acquires from the Borrower any interest in the said hereditaments or any part thereof, And the Borrower shall (until as aforesaid) accordingly have power to dispose of or deal with the said hereditaments or any part thereof in like manner in all respects as if these presents had not been executed, and as if the documents mentioned in the second Schedule hereto had merely been deposited with the Mortgagees to secure the said principal money and interest: And for giving effect to any such authorised sale or disposition the Mortgagees shall from time to time, if so required, and at the cost of the Borrower, sign (by themselves or their agents) a letter or memorandum stating that they have no claim in respect of the hereditaments comprised in such sale or disposition, and such letter or memorandum shall operate to discharge those hereditaments from any claim in respect of the deposit of documents or these presents (*j*).

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

Particulars of hereditaments.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Particulars of documents.

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(*i*) Unless some provision of this sort is added, it would be necessary for the mortgagees to concur in each sale, for this security is much stronger than a mere memorandum of deposit.

(*j*) This provision will bind the mortgagees without their executing this security.

# PART III.

## FURTHER CHARGES, TRANSFERS, AND CONSOLIDATING MORTGAGES.

### SECTION I.

#### FURTHER CHARGES.

##### No. 1.

#### FURTHER CHARGE *on* FREEHOLDS *or* LEASEHOLDS(a).

(A.) *Where the Mortgage Deed is recited.*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part :

WHEREAS by an Indenture of Mortgage (hereinafter called the Principal Indenture) dated the — day of —, and made between the Borrower of the one part, and the Mortgagee of the other part, certain freehold hereditaments at —, in the County of —, were conveyed by the Borrower to the Mortgagee in fee simple [*in the case of leaseholds, say certain leasehold hereditaments known as, &c., comprised in a Lease dated the — day*]

(a) This and some of the subsequent Precedents are framed so as to be applicable (A.) where the further charge recites the mortgage; (B.) where it is expressed to be supplemental to it, as suggested by s. 53 of the Conv. Act, 1881; and (C.) where it is indorsed on the mortgage.

Form (B.) is recommended for general adoption.

This Precedent can be readily adapted to the case of other property, and see Prec. V., *inf.*, for case where further security is given.

After notice of a second mortgage a first mortgagee cannot tack further advances to his security so as to take priority over the second mortgage; *Hopkinson v. Rolt* (1865), 9 H. L. C. 514; 34 L. J. Ch. 468; and see *Hughes v. Britannia, &c. Socy.*, 1906, 2 Ch. 607; 75 L. J. Ch. 739. This applies to further advances made by the first mortgagee under a covenant in his mortgage deed: *West v. Williams*, 1899, 1 Ch. 132; 68 L. J. Ch. 127.

|   |   |
|---|---|
| Leaseholds.   | of —, mentioned in the Principal Indenture, were demised by the Mortgagee to the Borrower for the residue of the term granted by that Lease (except the last — days thereof)] by way of mortgage for securing payment to the Mortgagee of the principal sum of £1,000, with interest thereon at the rate of £— per cent. per annum :  |
| State of mortgage debt.   | AND WHEREAS the said principal sum of £—, with the current half-yearly interest thereon, is still owing to the Mortgagee upon the security of the Principal Indenture :   |
| Agreement for further advance.                                    | AND WHEREAS ( <i>Form No. 2A, saying "the further sum of £—"</i> ) :  |
| Covenant to pay advance and interest.                             | NOW THIS INDENTURE WITNESSETH that in pursuance, &c. ( <i>Forms Nos. 3, 4, and 6, the consideration being the sum of £500, and the day for payment of that sum being the next half-yearly day fixed by the Mortgage for payment of interest</i> ) :   |
| Charge of advance and interest on property comprised in Mortgage. | AND FURTHER, that the hereditaments conveyed [demised] by the Principal Indenture shall stand charged with and shall not be redeemed except upon payment of the said sum of £500 and the interest thereon hereinbefore covenanted to be paid, as well as the said sum of £1,000 and the interest thereon secured by the Principal Indenture :   |
| Covenants in principal Mortgage to apply.                         | AND FURTHER, that all the covenants and provisions contained in the Principal Indenture shall apply and have effect for securing the payment of the principal money and interest hereby covenanted to be paid in the same manner as if the whole principal money secured by the Principal Indenture and these presents (making the aggregate sum of £—) and the interest thereon had been originally secured by the Principal Indenture [and so that the provision for reduction of the rate of interest contained in the Principal Indenture, and the provision therein contained restricting the right of calling in or paying off the principal money, shall apply to and include the principal money and interest hereby secured ( <i>b</i> )]. |
|   | IN WITNESS, &c.   |

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(*b*) The words within square brackets will only be used when applicable.

(B.) *Where the Further Charge is expressed to be supplemental to the Mortgage.*

THIS INDENTURE, made, &c. (*Date and parties, as above*):

WHEREAS these presents are supplemental to an Indenture (hereinafter called the Principal Indenture) dated, &c., and made, &c., being a mortgage of a [leasehold] messuage and lands, called — Farm, situated in the Parish of —, in the County of —, to secure payment by the Borrower to the Mortgagee of the principal sum of £—, with interest thereon at the rate of £— per cent. per annum [*or, if the further charge is written at the end of the mortgage, "Supplemental to the above-written Indenture of Mortgage (c), (hereinafter called the Principal Indenture)"*]:

By supplemental deed.

AND WHEREAS, &c. (*rest to be the same as (A.)*).

(C.) *Where the Further Charge is indorsed on the Mortgage (d).*

THIS INDENTURE, made the — day of —, 19—, BETWEEN the within-named A. B. (hereinafter called the Borrower), of the one part, and the within-named C. D. (hereinafter called the Mortgagee) of the other part:

By indorsement.

WHEREAS the principal sum of £—, secured by the within-written Indenture, still remains owing, with the current interest thereon (*Agreement for further advance, Form No. 2A, saying "further sum"*):

NOW, &c. (*The rest will be the same as (A.), substituting "the within-written Indenture" for "the Principal Indenture."*)

IN WITNESS, &c.

(c) It is assumed that the later deed is written at the end of the mortgage deed. If, as is sometimes done, it is engrossed on a separate parchment and attached to the principal deed after execution, the principal deed must be recited or referred to sufficiently for identification, just as if there were no annexation.

(d) If the further charge is written at the end of, instead of indorsed on, the mortgage, it may be either expressed to be supplemental as in (B.), or this form (C.) may be used, substituting "above" for "within" throughout.

## No. II.

FURTHER CHARGE *where there have been several* PRIOR  
FURTHER CHARGES.(A.) *Where the Mortgage and prior Further Charges are recited.*THIS INDENTURE, made, &c. (*Parties, definitions and recital of Mortgage, as in No. I.*):Recital of two  
deeds of  
Further  
Charge.

AND WHEREAS by two Indentures of Further Charge dated respectively the — day of — and the — day of —, and made between the parties hereto and in the same order, the hereditaments comprised in the Principal Indenture were charged with the payment by the Borrower to the Mortgagee of the further sums of £— and £— (making with the said sum of £— (*the original debt*) the aggregate principal sum of £—) and interest thereon:

That money  
remains due.

AND WHEREAS the said aggregate principal sum of £—, with the current interest thereon, is still owing to the Mortgagee upon the security of the Principal Indenture and the recited Indentures of Further Charge:

Agreement for  
further  
advance.

AND WHEREAS (*Form No. 2A, saying "further sum"*):

NOW THIS INDENTURE, &c. (*continue as in last Precedent (A.), but saying after "covenanted to be paid" as well as the said aggregate sum of £— and the interest thereon, secured by the Principal Indenture and the recited Indentures of Further Charge*).

IN WITNESS, &amp;c.

(B.) *Where the deed is expressed to be supplemental to the previous ones.*THIS INDENTURE, made, &c. (*Parties and definitions as above*):By supple-  
mental deed.

WHEREAS these presents are supplemental to an Indenture (hereinafter called the Principal Indenture) dated the — day of —, and made between the parties hereto and in the same order, being a mortgage of [leasehold] lands and hereditaments, situated at, &c., for securing payment by the Borrower to the Mortgagee of the principal sum of £— and interest thereon,

and are also supplemental to two Indentures of Further Charge made between the same parties, dated respectively the — day of — and the — day of —, whereby the said lands and hereditaments were charged with the payment by the Borrower to the Mortgagee of the further sums of £— and £— (making together with the said sum of £— the aggregate principal sum of £—) and interest thereon [*or*, supplemental to the above-written Indentures of Mortgage and Further Charge dated respectively (*dates*)] :

AND WHEREAS, &c. (*The rest to be the same as (A.).*)

IN WITNESS, &c.

(C.) *Where this Further Charge and the previous ones are indorsed on the Mortgage (c).*

THIS INDENTURE, made the — day of —, 19—, BETWEEN Parties, the within-named A. B. (hereinafter called the Borrower) of the one part, and the within-named C. D. (hereinafter called the Mortgagee) of the other part :

WHEREAS the principal sums of £—, £—, and £—, State of mortgage debt. secured by the within-written Indenture of Mortgage (hereinafter called the Principal Indenture), and the Indentures of Further Charge indorsed thereon, and dated respectively the — day of — and the — day of —, still remain owing with the current half-yearly interest thereon :

NOW, &c. (*Rest the same as (A.).*)

IN WITNESS, &c.

### No. III.

FURTHER CHARGE on COPYHOLDS. VARIATIONS *to provide for the cases* : (1) WHERE *there has been* NO CONDITIONAL SURRENDER ; (2) WHERE *there has been a* CONDITIONAL SURRENDER *and* NO ADMISSION ; and (3) WHERE *there has been* AN ADMISSION.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part :

---

(c) See note (d) to last Precedent.

Recital of  
Mortgage of  
copyholds.

WHEREAS these presents are supplemental to an Indenture of Mortgage (hereinafter called the Principal Indenture) dated the — day of —, and made between the Borrower of the one part and the Mortgagee of the other part, whereby the Borrower covenanted with the Mortgagee that the Borrower would surrender to the lord of the Manor of —, in the County of —, certain copyhold hereditaments known as —, parcel of the said Manor, To the Use of the Mortgagee and his heirs according to the custom of the said Manor, subject to the usual proviso for making void the said surrender on payment (on a date since passed) by the Borrower to the Mortgagee of the sum of £1,000, with interest thereon at the rate of £— per cent. per annum :

Where no  
conditional  
surrender.

AND WHEREAS no surrender has ever been made pursuant to the recited covenant :

[Where a  
conditional  
surrender.]

[AND WHEREAS on the — day of — the Borrower out of court surrendered the said hereditaments into the hands of the lord of the said Manor by the hands and acceptance of his steward according to the custom of the said Manor, To the Use of the Mortgagee and his heirs at the will of the lord according to the said custom and by and under the rents, fines, suits and services therefor due and of right accustomed, but subject to a condition for making void such surrender if the Borrower should (on a date since passed) pay to the Mortgagee the said sum of £1,000, with interest thereon at the rate aforesaid] :

[Where an  
admission  
pursuant to  
the conditional  
surrender.]

[AND WHEREAS on the — day of — the Mortgagee was duly admitted to the said hereditaments pursuant to the recited Surrender, To Hold to him and his heirs by copy of court roll, at the will of the lord, according to the said custom by and under the rents, fines, suits and services therefor due and of right accustomed] :

State of mort-  
gage debt.

AND WHEREAS the said principal sum of £1,000, with the current half-yearly interest thereon, is still due to the Mortgagee upon the security aforesaid :

Agreement for  
further  
advance.

AND WHEREAS (*Form No. 2A, saying "further sum"*) :

NOW THIS INDENTURE WITNESSETH as follows :—

Covenant to  
pay principal  
and interest.

1. (i.) In pursuance &c. (*Forms Nos. 3, 4, and 6, the consideration being the sum of £500 and the day for payment of that sum being the next half-yearly day fixed by the Mortgagee for payment of interest*) :

(ii.) AND FURTHER, that the hereditaments comprised in the Principal Indenture shall stand charged with and shall not be redeemed except upon payment of the said sum of £500 and the interest thereon hereinbefore covenanted to be paid, as well as the said sum of £1,000 and the interest thereon, secured by the Principal Indenture, and so that the covenant to surrender contained in that Indenture shall henceforth be read and have effect as if the proviso for making void the said surrender were on payment of the said sum of £500 and the interest thereon as well as the said sum of £1,000 and the interest thereon :

Charge.

Where no conditional surrender.

(iii.) AND FURTHER (*Covenants in principal mortgage to apply as in Precedent I.A.*).

[2. (*Omit the words in clause 1 (ii.) sup. "and so that the covenant to surrender" to the end of that sub-clause, and add new covenant to surrender, Form No. 10, new declaration of trust until surrender, as in Form No. 10A, and new power of attorney, Form No. 10B. The condition for making void the new surrender will be on payment of the aggregate mortgage debt of £1,500 and interest.*)]

[Where a conditional surrender, but no admission.]

[2A. (*Omit the words in clause 1 (ii.) sup. "and so that the covenant to surrender" to the end of that sub-clause, and add the following clause:*) For the consideration aforesaid the Borrower hereby authorises the Mortgagee and the persons deriving title under him to do all such acts and things as may be necessary and proper for the purpose of entering notice on the court rolls of the said Manor that the said admission shall be deemed to have been taken for the purpose of securing the said sum of £500 and the interest thereon, as well as the said sum of £1,000 and the interest thereon, as if the Mortgagee had been admitted to the said hereditaments pursuant to a surrender subject to a condition for making void the same on payment of both the said sums and the interest thereon, and the Borrower hereby irrevocably appoints the Mortgagee and the persons deriving title under him, or his substitute or substitutes, to be the attorney and attorneys of the Borrower for him and in his name and on his behalf to do and sign all such acts, documents and things as may be necessary and proper for giving effect to the provisions of this clause.]

[Where both a conditional surrender and admission.]

IN WITNESS, &c.

## No. IV.

FURTHER CHARGE *on* FREEHOLDS *where a* SECOND  
MORTGAGEE CONCURS *to* POSTPONE *his* SECURITY.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the 1st part, C. D., of, &c. (hereinafter called the Second Mortgagee), of the 2nd part, and E. F., of, &c. (hereinafter called the First Mortgagee), of the 3rd part:

Recital of  
First Mortgage.

*(Recite First Mortgage, as in Precedent I. of this Section, calling it the Principal Indenture, and saying First Mortgagee, instead of Mortgagee):*

Recital of  
Second Mortgage.

AND WHEREAS by an Indenture (hereinafter called the Second Mortgage) dated the — day of —, and made between the Borrower of the one part and the Second Mortgagee of the other part, the Borrower conveyed the said hereditaments (subject to the Principal Indenture and to the said principal sum of £1,000 and the interest thereon thereby secured) to the Second Mortgagee in fee simple by way of mortgage for securing the payment to the Second Mortgagee of the principal sum of £250, with interest thereon as therein mentioned:

Agreement for  
further  
advance.

*(Agreement for further advance of £500 by First Mortgagee; adapt Form No. 2A):*

Agreement by  
Second Mortgagee  
to  
postpone his  
security.

AND WHEREAS the Second Mortgagee has, at the request of the Borrower, agreed to join in these presents for the purpose of postponing the Second Mortgage to the security hereby made:

Covenant to  
pay principal  
and interest  
and charge.

NOW THIS INDENTURE WITNESSETH as follows:—

Grant of  
priority by  
Second  
Mortgagee.

1. IN pursuance, &c. *(continue as in Precedent I. of this Section to the end, and add the following clause):*

2. IN further pursuance of the said agreement and in consideration of the premises, the Second Mortgagee, at the request of the Borrower, hereby agrees that the hereditaments comprised in the Principal Indenture shall stand charged with the payment of the two sums of £1,000 and £500 and the interest thereon thereby and by these presents respectively secured in priority to the principal sum of £250 and the interest thereon secured by the Second Mortgage, and in like manner as if the Principal Indenture had been originally executed for securing the aggregate sum of £1,500 and interest.

3. (*Add acknowledgment by Second Mortgagee of the right of the First Mortgagee to production of the Second Mortgage. See Form No. 6, Sect. III., Purchase Deeds, p. 317, sup.*)

IN WITNESS, &c.

No. V.

FURTHER CHARGE *on a LIFE INTEREST and POLICY and ASSIGNMENT of a FURTHER POLICY (f).*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part :

Parties.

WHEREAS these presents are supplemental to an Indenture (hereinafter called the Principal Indenture) dated, &c., being a mortgage of the life estate of the Borrower in the C. Estate, in the County of G., and of his life interest in certain investments and of certain policies of assurance on the life of the Borrower for securing payment to the Mortgagee of the sum of £5,000 and interest thereon at the rate of £— per cent. per annum :

Recitals.  
Deed supplemental.

AND WHEREAS the said sum of £5,000 secured by the Principal Indenture, with the current half-year's interest thereon, is still due :

State of mortgage debt.

AND WHEREAS the Borrower has effected the further policy of assurance on his life hereinafter mentioned and assigned :

Another assurance.

AND WHEREAS (*Form No. 2b*) :

Agreement for advance and further security.

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £1,000 now paid by the Mortgagee to the Borrower (*the receipt, &c.*), the Borrower (*covenant, Forms Nos. 4 and 6, to pay the further sum of £1,000 and interest on next half-yearly day and interest half-yearly on the same days as in the Principal Indenture, and adding the following words*) :—

Covenant for payment of the further advance and interest.

AND FURTHER, that the hereditaments, annual income, policies, and money respectively demised and assigned by the Principal Indenture shall stand charged with and shall not be redeemed except upon payment of the said sum of £1,000 and the interest thereon hereinbefore covenanted to be paid, as well as the said

And Further Charge.

(*f*) New notice as to the original policies should be given as well as notice of the assignment of the new policy to the insurance society. Also notice should be given to all the trustees of the document creating the life interest.

New notices.

sum of £5,000 and the interest thereon secured by the Principal Indenture.

2. For the consideration aforesaid the Borrower, As Beneficial Owner, hereby assigns unto the Mortgagee

Assignment of  
new policy.

ALL THAT policy of assurance effected in the name and on the life of the Borrower for the sum of £—— with the —— Insurance Company dated, &c., and numbered, &c., and at the annual premium of £——, and the said sum of £—— and all other money to become payable thereunder and the full benefit thereof,

To HAVE AND RECEIVE the same unto the Mortgagee, subject to the like right of redemption as immediately after the execution of these presents and under the Principal Indenture and these presents will be subsisting with respect to the said hereditaments, annual income, policies and money respectively demised and assigned by the Principal Indenture.

Covenants in  
principal deed  
to apply.

3. The Borrower hereby covenants with the Mortgagee that all the covenants and provisions contained in the Principal Indenture shall apply and have effect with respect to the policy hereby assigned, and also for securing the payment of the principal money and interest hereby covenanted to be paid, in the same manner as if the whole principal money secured by the Principal Indenture and these presents, making together the sum of £6,000 and the interest thereon, had been originally secured by the Principal Indenture, and as if the policy hereby assigned had been thereby assigned for securing the payment of the said aggregate sum of £6,000 and the interest thereon, and as if the said aggregate sum and all the said policies had been actually mentioned and included in the covenants and provisions contained in the Principal Indenture.

[Provisions for  
reduction of  
interest and  
term of  
advance to  
apply.]

[4. The provision for reduction of the rate of interest contained in the Principal Indenture and the provision therein contained restricting the right of calling in or paying off the principal money shall apply to and include the principal money and interest hereby secured in like manner as if the aggregate principal sum of £6,000 had been originally secured by the Principal Indenture and the covenants and provisions of that Indenture had applied to the policy hereby assigned in the manner in which the same are so applied by the covenant of the Borrower hereinbefore contained (g).]

IN WITNESS, &c.

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(g) This clause will only be used when applicable.

## SECTION II.

## TRANSFERS OF MORTGAGES.

## No. I.

TRANSFER of a MORTGAGE of FREEHOLDS without the CONCURRENCE of the MORTGAGOR. VARIATIONS where there has been an INTERMEDIATE TRANSFER or a FURTHER CHARGE, or where the TRANSFERORS have paid INCREMENT VALUE or REVERSION DUTY.

THIS INDENTURE, made, &c. (*h*). BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Transferors), of the one part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees), of the other part :

Parties.

WHEREAS these presents are supplemental to an Indenture of Mortgage (hereinafter called the Principal Indenture) dated the — day of —, and made between R. S. (*the Borrower*) of the one part, and the Transferors [*or* O. and P. (hereinafter called the Original Mortgagees)] of the other part, whereby certain freehold hereditaments known as the — Estate, in the County of —, were conveyed to the Transferors [*or* the Original Mortgagees] in fee simple by way of mortgage for securing payment to them [*on a joint account (i)*] of the principal sum of £—, with interest thereon at the rate of £— per cent. per annum [*reducible on punctual payment to £— per cent. per annum*].

Recital of Mortgage.

[AND WHEREAS by an Indenture of Transfer dated the — day of —, and made between the Original Mortgagees of the one part and the Transferors of the other part, the said mortgage debt of £—, with the interest thereon, was assigned to the Transferors absolutely, and the freehold hereditaments comprised in the Principal Indenture were conveyed To the Use of the Transferors in fee simple, subject to the right of redemption subsisting therein under the Principal Indenture] :

[Variation where there has been a Transfer.]

(*h*) Notice of this transfer should be given to the mortgagor, see Judicature Act, 1873, s. 25 (6). The stamp will be *6d. ad valorem* duty for every £100 or part of £100 transferred.

This and the following Precedents can readily be adapted to transfers of other classes of mortgages, *e.g.*, of life interest and policies.

Transfer of mortgage of life interest and policy, &c.

(*i*) These words are only inserted where one of the mortgagees has died, in which case his death should be recited, and see Conv. Act, 1881, s. 61.

[Variation where there has been a Further Charge.]

[AND WHEREAS these presents are also supplemental to an Indenture of Further Charge dated the — day of —, and made between the Borrower (*l*) of the one part, and the Transferors of the other part, whereby the Borrower charged the hereditaments comprised in the Principal Indenture with the payment to the Transferors of the further sum of £—— (making with the said sum of £—— (*the original debt*) the aggregate principal sum of £——), with interest thereon at the rate aforesaid]:

State of mortgage debt.

AND WHEREAS the said [aggregate] principal sum of £—— still remains owing to the Transferors upon the security of the Principal Indenture [and the recited Indenture of Further Charge], with interest thereon from the — day of — last (*m*):

[Variation where mortgagees have paid land value duties.]

[AND WHEREAS the Transferors in the year 19— paid the sum of £—— in respect of increment value [reversion] duty and the costs of paying the same attributable to the hereditaments comprised in the Principal Indenture and accordingly the said sum of £—— (*amount of duty and costs*) as well as the said sum of £—— (*amount secured by mortgage*) making the aggregate sum of £—— with interest thereon from the — day of — remains owing on the security of the Principal Indenture (*mm*).]

(*l*) If this recital is used, see that the mortgage is defined as the borrower in the recital of the mortgage.

Interest on a mortgage debt in the case of a transfer.

(*m*) As the mortgagor does not concur there will probably be interest, accruing or accrued, to be transferred. *Ad valorem* duty must be paid on interest in arrear, but not on interest which has not accrued due at the date of the transfer: *Alpe*, 11th ed., 176.

Where the mortgagor concurs, interest in arrear at the date of the mortgage can be added to the security by the transferee: *Aguen v. King*, 1902, 1 Ir. R. 471.

Where a mortgage is transferred without the concurrence of the mortgagor, the mortgagee takes subject to the state of account between the transferor and the mortgagor: *Dixon v. Finch*, 1900, 1 Ch. at p. 742; 69 L. J. Ch. 465; *Turner v. Smith*, 1901, 1 Ch. 213; 70 L. J. Ch. 141. In practice an arrangement is often made between the transferor and the mortgagee, under which the mortgagee pays the interest down to the date of the transfer to the transferor, and the transferor gives him a separate receipt and an authority to receive and, if necessary, to apply in the name of the transferor for the interest accrued down to the date of the transfer.

Costs of transfer.

The mortgagee cannot add the costs of transfer to the security if the mortgagor does not join: *Re Radcliffe* (1856), 22 Beav. 201. The trustee of a term, which has been mortgaged, can charge the costs of obtaining a transfer on the settled property: *Scovell v. Bishop* (1893), 62 L. J. Ch. 985.

(*mm*) See Fin. (1909-10) Act, 1910, s. 39 (4).

AND WHEREAS the Mortgagees have agreed to pay to the Transferors the sum of £—— upon having such transfer as hereinafter appearing of the said [aggregate] principal sum of £—— and interest and the securities for the same :

Agreement for transfer.

NOW THIS INDENTURE WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £——now paid by the Mortgagees to the Transferors (the receipt of which sum the Transferors hereby acknowledge), the Transferors, As Mortgagees, hereby assign unto the Mortgagees

Assignment of mortgage debt and interest.

ALL THAT the [aggregate] principal sum of £—— owing upon the security of the Principal Indenture [and the recited Indenture of Further Charge] and all interest due or to become due thereon and the full benefit of and the right to exercise and enforce all powers and securities for compelling payment thereof,

To HAVE AND RECEIVE the same unto the Mortgagees absolutely.

2. For the consideration aforesaid the Transferors, As Mortgagees, hereby convey unto the Mortgagees

Conveyance to the Transferees.

ALL AND SINGULAR the hereditaments comprised in the Principal Indenture or now by any means vested in the Transferors, subject to redemption thereunder [and under the recited Indenture of Further Charge] (*u*),

To HOLD unto and To THE USE of the Mortgagees in fee simple, subject to such right of redemption as is now subsisting therein under the Principal Indenture [and the recited Indenture of Further Charge].

IN WITNESS, &c. (*o*).

(*u*) The intermediate transfer (if any) should not be referred to here; it does not affect the equity of redemption.

(*o*) Where the transfer is effected by indorsement on the mortgage the following form will be followed:—

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. and C. D. (hereinafter called the Transferors) of the one part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees), of the other part:

By indorsement.

WHEREAS the principal sum of £—— secured by the within-written Indenture remains owing to the Transferors (*continue as in the text substituting the words “the within-written Indenture” for “the principal Indenture” throughout*).

IN WITNESS, &c.

## No. II.

TRANSFER of a MORTGAGE (*p*) on the APPOINTMENT of NEW TRUSTEES, the trust not being disclosed.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., C. D., of, &c., and D. B., of, &c. (hereinafter called the Transferors), of the one part, and the said C. D. and X., of, &c., and Y., of, &c. (hereinafter called the Mortgagees), of the other part :

Recitals.  
Mortgage.

WHEREAS these presents are supplemental to an Indenture of Mortgage (hereinafter called the Principal Indenture) dated, &c., and made, &c., being a mortgage of the fee simple of lands and hereditaments situated at, &c., for securing payment to the Transferors of the sum of £——, with interest thereon (*q*) :

That money  
still due on  
the Mortgage  
and belongs  
to the Mort-  
gagees.

AND WHEREAS the said sum of £——, with the current interest thereon, is still due on the security of the Principal Indenture, and now belongs to the Mortgagees in equity on a joint account (*r*):

NOW THIS INDENTURE WITNESSETH as follows :—

Assignment  
of debt.

1. IN consideration of the premises the Transferors, As Mortgagees, hereby assign unto the Mortgagees (*s*)

Parcels.

ALL THAT the principal sum of £—— now owing upon the security of the Principal Indenture, and all interest due and to become due thereon, and the full benefit of and the right to exercise and enforce all powers and securities for compelling payment of the said sum and interest,

Habendum.

To HAVE AND RECEIVE the same unto the Mortgagees absolutely on a joint account.

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(*p*) *I.e.*, an investment made by the trustees of a settlement or Will. This Precedent can be readily adapted to the case of leaseholds, see Prec. XVIII. of this Section, p. 972, *inf*.

(*q*) The mortgage will not have disclosed any trust because it was taken *after* the creation of the trust.

(*r*) This recital enables the trusts to be kept off the title: *Re Harman, &c. Ry. Co.* (1883), 24 Ch. D. 720; 52 L. J. Ch. 808; *Corrill v. Real, &c. Advance Co.* (1889), 42 Ch. D. at p. 272; 58 L. J. Ch. 688; see also Dart, 7th ed., 336. Where the trust is accidentally disclosed to a purchaser, see *Re Blairberg and Abrahams*, 1899, 2 Ch. 340; 68 L. J. Ch. 578.

Conveyance  
to self and  
others.

(*s*) Under s. 50 of the Conv. Act, 1881, freehold land and a thing in action may be conveyed by a person to himself jointly with another person. Before the Act it was necessary to convey to one of the new trustees to the use of all the future trustees.

2. For the consideration aforesaid the Transferors, As Mortgagees, hereby convey unto the Mortgagees Conveyance of lands.

ALL the hereditaments comprised in and conveyed by the Principal Indenture,

To HOLD unto and To THE USE of the Mortgagees in fee simple, subject to such right of redemption as is now subsisting therein on payment of the said sum of £—— and the interest thereon :

3. (*Form No. 47, as to implied covenants.*)

IN WITNESS, &c. (*t*).

### No. III.

TRANSFER of a MORTGAGE, made in consideration of a Marriage, of FREEHOLDS, COPYHOLDS and LEASEHOLDS, the Mortgage Debt being held on the TRUSTS of the SETTLEMENT of even date.

See PRECEDENTS IN SETTLEMENTS (PERSONAL), Vol. II.

### No. IV.

TRANSFER of the MORTGAGE referred to in the last PRECEDENT on the appointment of a NEW TRUSTEE of the MORTGAGE DEBT, the TRUSTS of the SETTLEMENT being kept off the title.

See PRECEDENTS OF APPOINTMENTS OF NEW TRUSTEES, Vol. II.

### No. V.

TRANSFER of a MORTGAGE of FREEHOLDS where there have been several FURTHER CHARGES and TRANSFERS (*u*), the MORTGAGOR not CONCURRING.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., Parties.  
of, &c. (hereinafter called the Transferors), of the one part, and

---

(*t*) If the debt transferred exceeds £2,000, the deed should be stamped Stamp.  
*ad valorem* to avoid the doubt whether the 10s. stamp brings the trusts on the title, see Wolst. Conv. Acts, 9th ed., 127.

(*u*) A Precedent in this form may be found useful where there have been many further charges and transfers.

E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees), of the other part :

Recital of Mortgage.

WHEREAS these presents are supplemental to an Indenture of Mortgage (hereinafter called the Principal Indenture) dated, &c. (*continue as in Form No. 1A, defining the Mortgagor as the Borrower and the Original Mortgagees as the Original Mortgagees*) :

Recital of effect of Further Charges in first Schedule.

AND WHEREAS by the several Indentures of Further Charge mentioned in the first Schedule hereto the Borrower charged the hereditaments comprised in the Principal Indenture with the payment of the further sums mentioned in that Schedule (making with the said principal sum of £—— the aggregate principal sum of £——), with interest thereon at the rate aforesaid :

Recital of effect of Transfers in second Schedule.

AND WHEREAS under the several Indentures of Transfer mentioned in the second Schedule hereto the said aggregate principal sum of £——, with the interest thereon, is now vested in the Transferors absolutely and the hereditaments comprised in the Principal Indenture are now vested in the Transferors in fee simple, subject to the right of redemption therein now subsisting under the Principal Indenture and the said Indentures of Further Charge on payment of the said aggregate principal sum and the interest thereon :

State of mortgage debt.

AND WHEREAS (*as in Precedent I. of this Section, but refer to “the said Indentures of Further Charge”*) :

Agreement for transfer.

AND WHEREAS the Mortgagees have agreed to pay to the Transferors the sum of £—— upon having such transfer as hereinafter appearing of the said aggregate principal sum of £—— and interest and the securities for the same :

NOW THIS INDENTURE WITNESSETH as follows :—

Assignment of aggregate mortgage debt and interest.

1. IN pursuance, &c. (*continue as in clause 1 of Precedent I. of this Section, but say in the parcels*

ALL THAT the aggregate principal sum of £—— owing upon the security of the Principal Indenture and the Indentures of Further Charge mentioned in the first Schedule hereto).

2. FOR the consideration aforesaid (*continue as in clause 2 of Precedent I. of this Section, but say “the Indentures of Further Charge mentioned in the first Schedule hereto” instead of “the recited Indenture of Further Charge”*).

IN WITNESS, &c.

## THE FIRST SCHEDULE ABOVE REFERRED TO.

## Particulars of Further Charges.

| Date of Further Charge. | Parties. | Amount charged. |
|-------------------------|----------|-----------------|
|                         |          |                 |

## THE SECOND SCHEDULE ABOVE REFERRED TO.

## Particulars of Transfers.

| Date. | Names of Transferors. | Names of Transferees. |
|-------|-----------------------|-----------------------|
|       |                       |                       |

## No. VI.

TRANSFER of MORTGAGE of FREEHOLDS where the  
MORTGAGOR joins (c).

THIS INDENTURE, made, &c., BETWEEN C. D., of, &c. (herein- Parties.  
after called the Transferor), of the 1st part, A. B., of, &c.  
(hereinafter called the Borrower), of the 2nd part, and E. F.,  
of, &c. (hereinafter called the Mortgagee), of the 3rd part :

WHEREAS these presents are supplemental, &c. (*as in Form  
No. 1A, referring to the Mortgagor as the Borrower*) :

AND WHEREAS the said principal sum of £—— remains owing State of mort-  
to the Transferor upon the security of the Principal Indenture, gage debt.

(c) A new covenant from the mortgagor with the transferee for payment New covenant  
of the mortgage money and interest is unnecessary, because the benefit of to pay.  
the existing covenant now passes to the transferee at law under the Jud. Act,  
1873, s. 25 (6). But if the equity of redemption has devolved on some other  
person since the mortgage, a new covenant from the owner of it is desirable,  
see next Precedent. In many cases a new covenant is given as a matter of  
course. Where there is a consolidation the new covenant to pay will be  
placed immediately after the transfer of the debt.

but all interest thereon has been paid up to the date of these presents (*x*) :

Agreement  
to transfer.

AND WHEREAS the Mortgagee, at the request of the Borrower, has agreed to pay to the Transferor the sum of £—— upon having such transfer of the said mortgage debt and interest and the securities for the same as hereinafter appearing :

NOW THIS INDENTURE WITNESSETH as follows :—

Assignment of  
mortgage debt  
and interest.

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagee, at the request of the Borrower, to the Transferor (the receipt and payment of which sum the Transferor and the Borrower hereby respectively acknowledge), the Transferor, by the direction of the Borrower and As Mortgagee, hereby assigns unto the Mortgagee (*continue as in clause 1 of Precedent I. of this Section*).

Conveyance of  
mortgaged  
property.

2. For the consideration aforesaid the Transferor, As Mortgagee and by the direction of the Borrower, hereby conveys and the Borrower, As Beneficial Owner, hereby conveys and confirms unto the Mortgagee

ALL AND SINGULAR the lands and hereditaments comprised in the Principal Indenture and now vested in the Transferor, subject to redemption thereunder,

To HOLD unto and To THE USE of the Mortgagee in fee simple, subject to such right of redemption as is now subsisting therein under the Principal Indenture.

3. (*Add Form No. 49 and any other special clauses which may be required for extending the provisions of the principal mortgage.*)

IN WITNESS, &c.

## No. VII.

TRANSFER of MORTGAGE of FREEHOLDS where the EQUITY of REDEMPTION has passed to some other person who joins (*y*).

Parties.

THIS INDENTURE, made, &c., BETWEEN C. D., of, &c. (hereinafter called the Transferor), of the 1st part, A. B., of, &c. (*person entitled to equity of redemption*) (hereinafter called the Borrower),

Interest paid  
up to date.

(*x*) As the borrower joins, it can be arranged that the interest should be paid up to date.

(*y*) See notes to last Precedent.

of the 2nd part, and E. F., of, &c. (hereinafter called the Mortgagee), of the 3rd part :

WHEREAS these presents are supplemental to, &c. (*as in Form No. 1A, but not defining the name of the original Mortgagor*) :

AND WHEREAS (*Recite the Conveyance, Will, &c., under which the equity of redemption became vested in the Borrower*) :

AND WHEREAS the said principal sum, &c. (*continue as in last Precedent to the end, and then add*) :

3. THE BORROWER hereby covenants with the Mortgagee to pay the said principal sum of £—— on the —— day of —— next, with interest thereon from the date hereof at the rate mentioned in the Principal Indenture ; And also, so long after the said —— day of —— next as any principal money remains due under the Principal Indenture or these presents, to pay interest thereon at the same rate upon the half-yearly days fixed for payment thereof by the Principal Indenture.

Covenant by owner of equity of redemption to pay principal money and interest.

4. (*Add Form No. 49 and any other special clauses which may be required for extending the provisions of the principal mortgage.*)

IN WITNESS, &c.

## No. VIII.

TRANSFER *by SUPPLEMENTAL DEED of a MORTGAGE in FEE and FURTHER CHARGE by EXECUTOR of the survivor of deceased MORTGAGEES, the MORTGAGOR not CONCURRING.*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Transferor), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part :

Parties.

WHEREAS these presents are supplemental to an Indenture of Mortgage dated the —— day of ——, and made between E. F. of the one part, and G. H. and K. L. (hereinafter called the Original Mortgagees) of the other part, whereby certain hereditaments situated at, &c., were conveyed to the use of the Original Mortgagees in fee simple by way of mortgage for securing payment to them on a joint account of the sum of £——, with interest thereon at the rate of £—— per cent. per annum, and are also supplemental to an Indenture of Further Charge dated the —— day of ——, and made between the same parties and in the same order, for securing payment to the Original Mortgagees on

Recitals.

Mortgage and Further Charge.

a joint account of the further sum of £—, with interest thereon at the rate aforesaid, on the same hereditaments:

Death of  
Mortgagees,  
and Will  
of survivor.

AND WHEREAS the said G. H. died on the — day of —, 1894, and the said K. L. died on the — day of —, 1900, having by his Will dated the — day of — appointed the Transferor to be his executor, who duly proved the said Will on the — day of — at the — Probate Registry:

Principal  
and current  
interest due.

AND WHEREAS the said principal sums of £— and £— are due to the Transferor as such executor as aforesaid on the hereinbefore mentioned securities, with interest thereon from the — day of — last (z):

Agreement  
for transfer.

AND WHEREAS the Mortgagee has agreed to pay to the Transferor the said sums of £— and £—, and also the sum of £— for the interest thereon from the said — day of — last (making together the total sum of £—) upon having such transfer as hereinafter appearing of the said principal sums of £— and £— and interest, and the securities for the same:

NOW THIS INDENTURE WITNESSETH as follows:—

Assignment  
of debts.

1. IN pursuance of the said agreement and in consideration of the sum of £— [*the total sum*] now paid by the Mortgagee to the Transferor (the receipt of which sum the Transferor hereby acknowledges), the Transferor, As Personal Representative of the said K. L., deceased, hereby assigns unto the Mortgagee

ALL those the said principal sums of £— and £— owing on the aforesaid securities, and all interest due and to become due thereon respectively, and the full benefit of and the right to exercise and enforce all powers and securities for compelling payment of the said sums and interest,

To HAVE AND RECEIVE the same unto the Mortgagee absolutely.

Conveyance of  
hereditaments.

2. For the consideration aforesaid the Transferor, As Personal Representative of the said K. L. deceased, hereby conveys (a) unto the Mortgagee

ALL the hereditaments conveyed by the said Indenture of Mortgage or which are now by any means vested in the Transferor,

(z) See note (m), to Prec. I. of this Section, p. 954, *sup*.

(a) As the surviving mortgagee died after the commencement of the Conv. Act, 1881, the mortgaged land, being freehold, vests in the executor of the last surviving mortgagee under s. 30 of that Act.

subject to redemption thereunder and under the said Indenture of Further Charge,

To HOLD unto and To THE USE of the Mortgagee in fee simple, subject to such right of redemption as is now subsisting therein under the said Indentures of Mortgage and Further Charge.

IN WITNESS, &c.

### No. IX.

#### TRANSFER of MORTGAGE of FREEHOLDS by INDORSED DEED by the PERSONAL REPRESENTATIVE (b) of the SURVIVOR of TWO MORTGAGEES where the MORTGAGOR joins.

THIS INDENTURE, made, &c., BETWEEN C. D., of, &c. (herein- Parties.  
after called the Transferor), of the 1st part, the within-named  
A. B., of, &c. (hereinafter called the Borrower), of the 2nd part,  
and G. H., of, &c. (hereinafter called the Mortgagee), of the  
3rd part :

WHEREAS the within-named L. M. died on the — day of Recital of  
— and the within-named N. O. died on the — day of —, deaths of  
having by his Will dated, &c., appointed the Transferor to be his Mortgagees  
executor, who on the — day of — duly proved the same at and Will of  
the — Probate Registry : survivor.

AND WHEREAS the principal sum of £— secured by the State of  
within-written Indenture still remains owing, but all interest mortgage debt.  
thereon has been paid up to the date of these presents :

AND WHEREAS the Mortgagee has agreed, at the request of the Agreement for  
Borrower, to pay the sum of £— to the Transferor upon transfer.  
having such transfer as hereinafter appearing of the said mort-  
gage debt and the securities for the same :

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of Transfer of  
the sum of £— now paid by the Mortgagee, at the request of the principal  
Borrower, to the Transferor (the receipt, &c.), the Transferor, As money and  
Personal Representative of the said N. O., deceased, hereby assigns interest.  
unto the Mortgagee, &c. (continue as in clause 1 of Precedent I.  
of this Section, p. 955, sup., omitting the words “ due or ”).

(b) See last note to last Precedent.

Conveyance of mortgaged property.

2. For the consideration aforesaid the Transferor, As the Personal Representative of the said N. O., deceased, and by the direction of the Borrower, hereby conveys and the Borrower, As Beneficial Owner, hereby conveys and confirms, &c. (*continue as in clause 2 of Precedent I. of this Section, and add new covenant by the Borrower to pay principal and interest, as in Precedent VII. of this Section, if there has been any devolution of the equity of redemption. Also add Form No. 49 and any other special clauses which may be required for extending the provisions of the original mortgage*).

IN WITNESS, &c.

### No. X.

#### TRANSFER of MORTGAGE of COPYHOLDS with the CONCURRENCE of the MORTGAGOR (c) where there has been a CONDITIONAL SURRENDER.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Transferor), of the 1st part, C. D., of, &c. (hereinafter called the Borrower), of the 2nd part, and E. F., of, &c. (hereinafter called the Mortgagee), of the 3rd part :

Recital of mortgage of copyholds.

WHEREAS these presents are supplemental to an Indenture (hereinafter called the Principal Indenture) dated, &c., and made, &c., whereby certain hereditaments, copyhold of the Manor of —, in the County of —, were covenanted to be surrendered by the Borrower To the Use of the Transferor and his heirs, subject to a condition for making void such surrender on payment by the Borrower to the Transferor of the sum of £—, with interest thereon, on the — day of — (d) :

Proper mode of transferring copyholds.

(c) Where the concurrence of the mortgagor can be obtained, and the mortgagee has not been admitted on the conditional surrender, the proper mode of effecting a transfer of a mortgage of copyholds is by entering up satisfaction on the former conditional surrender, and having a new conditional surrender to the transferee. If, by reason of the disability of the mortgagor, or any other reason, his concurrence cannot be obtained, the only mode, where there has been a conditional surrender, of effecting a transfer seems to be that adopted in Prec. XIII., *inf.*, unless the transferee is willing to allow the right to admittance on the old conditional surrender to remain vested in the transferor as a trustee for him until a new conditional surrender can be obtained from the mortgagor. Where there has been no conditional surrender, then Prec. XVII., *inf.*, applies.

(d) See also Form No. 1A, *sup.*, which gives a recital of a mortgage of freeholds, copyholds and leaseholds.

AND WHEREAS in pursuance of the said covenant contained in the Principal Indenture the said copyhold hereditaments were on the — day of — surrendered out of court To the Use of the Transferor and his heirs, subject to such condition as aforesaid, but the Transferor has not been admitted tenant pursuant to the said surrender :

Of conditional surrender to Transferor.

That Transferor has not been admitted.

AND WHEREAS (*Recite state of mortgage debt and agreement for transfer, as in Precedent VI. of this Section*) :

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows :—

1. In pursuance, &c. (*Assignment of mortgage debt, &c., as in Precedent VI. of this Section*).

Transfer of mortgage debt.

2. (i.) For the consideration aforesaid the Borrower, As Beneficial Owner, hereby covenants with the Mortgagee that the Borrower will (*continue Forms Nos. 10, 10A, and 10B (c)*).

Borrower covenants to surrender charge on copyholds and appointment of attorney.

3. SATISFACTION shall be entered up on the said Conditional Surrender of the — day of — at the cost of the Borrower (*f*).

Agreement for entering up satisfaction on former conditional surrender.

4. (*Add Form No. 49 and any other special clauses which may be required for extending the provisions of the original mortgage.*)

IN WITNESS, &c.

## No. XI.

### WARRANT to ENTER up SATISFACTION of CONDITIONAL SURRENDER.

THE MANOR of —, | I, A. B., of, &c. (*Transferor*), HEREBY  
in the County of — | ACKNOWLEDGE that I have this —  
day of — received from E. F., of, &c. (*Transferee*), by the  
direction of C. D., of, &c. (*Borrower*), the sum of £—, owing  
to me on the security of a Conditional Surrender made to me by  
the said C. D. of certain copyhold hereditaments held of the  
said Manor, and dated the — day of — ; And I hereby direct  
and require the steward of the said Manor to enter up satisfaction  
of the said conditional surrender on the court rolls of the said  
Manor, and for so doing this shall be his sufficient warrant and  
authority.

(Signed) A. B. (*the Transferor*).

(c) See Prec. XII. of this Section for form of conditional surrender.

(f) See next Precedent for form of warrant.

## No. XII.

CONDITIONAL SURRENDER *by* MORTGAGOR *to* TRANSFEREE  
of MORTGAGE.

Recital of  
previous  
conditional  
surrender.

THE MANOR *of* —, } WHEREAS on the — day of —  
*in the County of* — } C. D. (*Borrower*), of, &c., one of the  
copyhold tenants of the Manor, came before X. Y., the steward  
of the Manor, and in consideration of the sum of £— paid  
to the said C. D. (*Borrower*) by A. B., of, &c. (*Transferor*), the  
said C. D. surrendered the copyhold hereditaments hereinafter  
described To the Use of the said A. B. and his heirs, at the will of  
the lord, according to the custom of the Manor, by and under  
the rents, fines, suits and services therefor due and of right  
accustomed, subject to a condition for making void the surrender  
upon payment by the said C. D. to the said A. B. of the sum of  
£—, with interest thereon, on the — day of — then next:

That Trans-  
feror has  
not been  
admitted.

AND WHEREAS the said A. B. has not been admitted on the said  
surrender:

AND WHEREAS the said principal sum remains owing, but all  
interest thereon has been paid up to the date hereof:

Payment by  
Mortgagee,  
and warrant  
to enter up  
satisfaction.

AND WHEREAS E. F., of, &c. (*Transferee*), has, at the request of  
the said C. D., this day paid to the said A. B. the said sum of  
£— and the said A. B. has given his warrant to the steward to  
enter up satisfaction of the said conditional surrender:

Surrender to  
Transferee,

NOW BE IT REMEMBERED, that on this — day of —,  
19—, the said C. D. came before the said X. Y., of, &c., steward  
of the said Manor, out of court, and in consideration of the  
premises surrendered into the hands of the lord of the said  
Manor, by the hands and acceptance of the said steward,  
according to the custom of the said Manor

ALL, &c. (*see Forms in Sect. II., Purchase Deeds*).

TO THE USE of the said E. F. and his heirs, at the will of the  
lord, according to the custom of the said Manor, at and under  
the rents, fines, suits and services therefor due and of right  
accustomed:

subject to  
condition.

SUBJECT, NEVERTHELESS, TO THIS CONDITION that if the said C. D.  
shall on the — day of — next pay to the said E. F.  
the sum of £—, with interest thereon at the rate of £— per

cent. per annum, from the date of this surrender, then and in such case this surrender shall be void, but otherwise shall remain in full force.

Taken and accepted the day and year last above written by me,  
(Signed) X. Y. (*Steward*),  
Steward of the Manor.

### No. XIII.

TRANSFER of MORTGAGE of COPYHOLDS.—*The MORTGAGOR being dead, LEAVING an INFANT HEIR, his WIDOW and ADMINISTRATRIX JOINS in the TRANSFER (by indorsement, or by deed written at the end of the Mortgage).*

THIS INDENTURE, made, &c., BETWEEN the within-named [*or Parties.*  
above-named] C. D. (hereinafter called the Transferor), of the 1st part, A. Y., of, &c. (*administratrix of Mortgagee*), of the 2nd part, and E. F., of, &c. (hereinafter called the Mortgagee), of the 3rd part :

WHEREAS (*Recite conditional surrender by X. Y. to the Transferor, and that he has not been admitted, as in Precedent X. of this Section*) :

*Recite conditional surrender to use of Transferor, and that he has not been admitted.*

AND WHEREAS the said X. Y. died on the — day of — intestate, leaving the said A. Y., his widow, and N. Y., his only son and customary heir (*g*), who was born on the — day of — :

*Death of Borrower intestate.*

AND WHEREAS Letters of Administration to the estate and effects of the said X. Y. were on the — day of — granted to the said A. Y. by the — Probate Registry :

*Administration granted to Borrower's widow.*

AND WHEREAS the principal sum of £—, secured by the within- [*or above-*] written Indenture, still remains owing,

*State of mortgage debt.*

(*g*) Part I. of the L. T. Act, 1897, does not apply to copyhold land in any case in which an admission or any act by the lord is necessary to perfect the title of a purchaser from the customary tenant, see s. 1 (4). It has been held in *Re Somerville and Turner*, 1903, 2 Ch. 583; 72 L. J. Ch. 727, that the Act applies to an equitable interest in copyholds, but in the text the mortgagor at his death was on the rolls: hence the case does not apply. It is assumed that the administratrix (who may have a right to freebench) has paid the interest. She takes no charge under the Intestates' Estates Act, 1890, where the deceased left issue.

*Devolution of copyholds on intestacy.*

but all interest thereon has been duly paid up to the date of these presents :

Agreement for transfer.

AND WHEREAS the Transferor lately applied to the said A. Y. to pay to him the said sum of £—, and the said A. Y., not having money in her hands available for that purpose, has requested the Mortgagee to pay the same, which the Mortgagee has agreed to do, upon having a transfer of the said mortgage debt and interest, and the securities for the same, in the manner hereinafter appearing :

NOW THIS INDENTURE WITNESSETH as follows:—

Transfer of debt,

1. In pursuance, &c. (*Assignment of mortgage debt by the Transferor at the request of A. Y., as in Precedent VI. of this Section*).

Covenant by Transferor to procure himself to be admitted, and after admittance to surrender to use of Mortgagee,

2. For the consideration aforesaid the Transferor, As Mortgagee, hereby covenants with the Mortgagee that the Transferor will forthwith, at the cost of the said A. Y. or of the estate of the said X. Y., deceased, procure himself to be admitted tenant of the copyhold hereditaments described in the within- [*or above*-] written Indenture, pursuant to the recited conditional surrender, and will as soon as conveniently may be after such admittance, at the like cost, surrender the same copyhold hereditaments into the hands of the lord of the said Manor

subject to right of redemption,

To THE USE of the Mortgagee and his heirs, at the will of the lord, according to the custom of the said Manor, at and under the rents, fines, suits and services therefor due and of right accustomed, subject to such right of redemption as is now subsisting in the said hereditaments by virtue of the recited conditional surrender and the within- [*or above*-] written Indenture :

and in the meantime to stand seised of said copyhold premises in trust for Mortgagee.

AND WILL in the meantime and until such surrender stand possessed of the said copyhold hereditaments, IN TRUST for the Mortgagee and his heirs, subject as aforesaid (*h*).

IN WITNESS, &c.

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(*h*) See next three Precedents for admissions and conditional surrender. If the customary heir were of age the original conditional surrender could have been vacated and the heir (with or without having been previously admitted) could have surrendered to use of the transferee. In this case the heir would give a new covenant to surrender, see Forms Nos. 10, 10A, and 10B.

## No. XIV.

ADMISSION *of original* MORTGAGEE to COPYHOLDS, to  
enable him to SURRENDER to a TRANSFEE.

THE MANOR *of* —, THE — day of —, 19—: WHEREAS Recite conditional surrender to use of Mortgagee.  
*in the County of* — on the — day of — X. Y., of, &c.,  
a customary tenant of this Manor, came before P. Q., steward  
of the same Manor, out of court, and in consideration of the  
sum of £— to the said X. Y. paid by C. D., of, &c., the said  
X. Y. surrendered into the hands of the lord of the said  
Manor ALL, &c. (*parcels*), To the Use of the said C. D. and his  
heirs, at the will of the lord, according to the custom of  
the said Manor, at and under the rents, fines, suits and services  
therefor due and of right accustomed, subject, nevertheless,  
to a condition for making void the said surrender upon  
payment by the said X. Y. to the said C. D. of the sum of  
£—, with interest thereon at the rate of £— per cent. per  
annum, on the — day of — then next:

AND WHEREAS default was made in payment of the said That default was made.  
principal sum of £— on the day mentioned in the said con-  
dition, and the said principal sum still remains owing to the  
said C. D., but all interest thereon has been paid up to the  
date hereof:

NOW BE IT REMEMBERED, that on the day first above-  
mentioned the said C. D. came before the said steward, out  
of court, and prayed to be admitted tenant to the said copyhold  
hereditaments surrendered to his use as aforesaid, to which  
said copyhold hereditaments the lord of the said Manor by the  
said steward granted seisin thereof by the rod, Mortgagee prays to be admitted.

To HOLD unto the said C. D. and his heirs, at the will of the  
lord, according to the custom of the said Manor, at and under  
the rents, fines, suits and services therefor due and of right  
accustomed, And so (saving the right of the lord and the right  
of any person or persons having an equity of redemption in the  
said hereditaments) the said C. D. is admitted tenant thereof  
and pays to the lord on such his admittance a fine [certain] of  
£—, and his fealty is respited. Grant to, and admittance of, Mortgagee.

## No. XV.

CONDITIONAL SURRENDER *of* COPYHOLDS *by original*  
MORTGAGEE *to* TRANSFEREE.

Consideration.

Mortgagee  
surrenders  
copyholds,

THE MANOR *of* —, } BE IT REMEMBERED, that on the  
*in the County of* — } — day of —, 19—, C. D., of, &c.,  
 a customary tenant of the said Manor, came before P. Q.,  
 steward of the said Manor, out of court, and in consideration of  
 the sum of £— paid to him by E. F., of, &c. (in satisfaction  
 of all money owing to the said C. D. on a conditional sur-  
 render of the hereditaments hereinafter described dated the  
 — day of —), did surrender into the hands of the lord of  
 the said Manor, by the hands and acceptance of the said  
 steward,

ALL, &c. (*parcels*) (to which hereditaments the said C. D. was  
 admitted tenant on the said conditional surrender on the day  
 before the date of this surrender, subject to the right of redemp-  
 tion subsisting therein),

TO THE USE of the said E. F. and his heirs, at the will of the  
 lord, according to the custom of the said Manor by and  
 under the rents, fines, suits and services therefor due and of right  
 accustomed,

subject to  
equity of  
redemption  
under  
conditional  
surrender.

SUBJECT, NEVERTHELESS, to such right of redemption as is  
 now subsisting therein under the said Conditional Surrender  
 dated the — day of —.

Taken and accepted the day and year first above written by  
 me,

P. Q.,  
 Steward.

## No. XVI.

ADMISSION *of* TRANSFEREE *pursuant to a* SURRENDER *by*  
*an* ORIGINAL MORTGAGEE.Recital of  
surrender to  
Mortgagee.

THE MANOR *of* —, } THE — day of —, 19—: WHEREAS  
*in the County of* — } on the — day of —, C. D., of,  
 &c., came before P. Q., the steward of the said Manor, out of  
 court, and surrendered to the lord of the said Manor, ALL, &c.  
 (*parcels*), To the Use of E. F., of, &c., and his heirs, at the will  
 of the lord, according to the custom of the said Manor by

and under the rents, fines, suits and services therefor due and of right accustomed,

SUBJECT, NEVERTHELESS, to such right of redemption as was subsisting therein under a Conditional Surrender of the said hereditaments dated the — day of — :

NOW BE IT REMEMBERED, that on the day and year first above written the said E. F. came before the said steward, out of court, and prayed to be admitted tenant to the said copyhold hereditaments surrendered to his use as aforesaid (to which copyhold hereditaments the lord of the said Manor, by his said steward, granted seisin thereof by the rod),

Admission of Mortgagee subject to equity of redemption.

TO HOLD unto the said E. F. and his heirs, at the will of the lord, according to the custom of the said Manor, by and under the rents, suits and services therefor due and of right accustomed :

AND so (saving the right of the lord and of all persons having an equity of redemption in the said hereditaments) the said E. F. is admitted tenant thereof, and pays to the lord for such his admission a fine [certain] of £—, and his fealty is respited.

## No. XVII.

TRANSFER *of* MORTGAGE *of* FREEHOLDS, *and of* COPYHOLDS *where* NO CONDITIONAL SURRENDER *has been made.*  
VARIATIONS *where* MORTGAGOR *does not join.*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Transferor), of the 1st part, C. D., of, &c. (hereinafter called the Borrower), of the 2nd part, and E. F., of, &c. (hereinafter called the Mortgagee), of the 3rd part:

Parties.

WHEREAS these presents are supplemental to an Indenture (hereinafter called the Principal Indenture) dated, &c., and made, &c., being a mortgage of freeholds and copyholds by the Borrower to the Transferor, for securing payment of the sum of £—, with interest thereon :

Recital of Mortgage of freeholds and copyholds.

AND WHEREAS no surrender has been made of the copyhold hereditaments comprised in the principal Indenture pursuant to the covenant for that purpose therein contained (*Recite state of mortgage debt, and agreement for transfer, as in Precedent VI. of this Section*) :

That no surrender has been made.

NOW THIS INDENTURE WITNESSETH as follows:—

Transfer of mortgage debt.

1. (*Assignment of mortgage debt, &c., as in Precedent VI. of this Section (i).*)

Conveyance of freeholds to Transferee, subject to equity of redemption (*k*).

2. For the consideration aforesaid the Transferor, As Mortgagee, at the request of the Borrower, hereby conveys and the Borrower, As Beneficial Owner, hereby conveys and confirms unto the Mortgagee

ALL the freehold hereditaments conveyed by the Principal Indenture, or which may be vested in the Transferor, subject to redemption thereunder,

To HOLD unto and To THE USE of the Mortgagee in fee simple, subject to such right of redemption as is now subsisting therein under the Principal Indenture.

Covenant to surrender copyholds.

3. (i.) (*Covenant by Borrower to surrender copyholds to Mortgagee, Form No. 10*):

(ii.) (*Charge on copyholds, &c., Form No. 10A*):

(iii.) (*Appointment of attorney, Form No. 10B*.)

4. (*Add, if the Mortgagor joins, Form No. 49 and any other special clauses required for extending the provisions of the original mortgage.*)

IN WITNESS, &c.

### No. XVIII.

#### TRANSFER of a MORTGAGE of LEASEHOLDS by SUB-DEMISE.

Parties.

THIS INDENTURE, made, &c. (*Parties and definitions as in Precedent I. of this Section, p. 953, sup., if the Borrower does not join, or as in Precedent VI. of this Section, p. 959, sup., if the Borrower joins*):

Recital of mortgage.

WHEREAS these presents are supplemental to an Indenture (hereinafter called the Principal Indenture) dated, &c., whereby the Borrower demised (*continue as in Form No. 1A*):

AND WHEREAS, &c. (*Recital of state of mortgage debt and agreement for transfer, as in Precedent I. or VI. of this Section*):

Variations if the borrower does not join.

(i) If the mortgagor does not join, omit throughout the references to the borrower, also clause 3, and state in recitals that the current interest is owing on the mortgage debt, and add at the end of the parcels of the mortgage debt in clause 1 “including the benefit of the covenant to surrender the trust and other provisions relating to the said copyhold hereditaments contained in the Principal Indenture.”

Forfeiture of copyholds.

(k) The mortgagor, being tenant on the rolls, must not convey the copyholds; to do so would give the lord a right to forfeit.

NOW THIS INDENTURE WITNESSETH as follows:—

1. (*Assignment of mortgage debt and interest and benefit of securities to Mortgagee, as in Precedent I. or VI. of this Section.*)

2. FOR the consideration aforesaid the Transferor, As Mortgagee [and by the direction of the Borrower, *if a party*], hereby assigns unto the Mortgagee

Assignment of leaseholds by Transferor to Mortgagee.

ALL the leasehold hereditaments comprised in and demised by the Principal Indenture,

TO HOLD unto the Mortgagee for the residue of the derivative term granted by the Principal Indenture, together with the benefit of the trust and other provisions contained in that Indenture with respect to the residue of the term granted by the said Indenture of Lease, subject as to all the said premises to such right of redemption as is now subsisting therein under the Principal Indenture.

Habendum.

3. [THE Transferor hereby substitutes the Mortgagee as the attorney of the Borrower for all the purposes of the power of attorney contained in the Principal Indenture, and the Borrower hereby confirms the aforesaid substitution and declares that the Mortgagee and the persons deriving title under him shall have the like power of substitution as is by the Principal Indenture given to the Transferor (*l.*)]

[Substitution of Mortgagee as the Borrower's attorney (*l.*)]

4. (*Add, if the Mortgagor joins, Form No. 49 and any other special clauses required for extending the provisions of the original mortgage.*)

IN WITNESS, &c.

#### No. XIX.

TRANSFER *of a MORTGAGE (by assignment) of a LONG TERM with the CONCURRENCE of the MORTGAGOR.*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Transferor), of the 1st part, C. D., of, &c. (hereinafter called the Borrower), of the 2nd part, and E. F., of, &c. (hereinafter called the Mortgagee), of the 3rd part:

Parties.

(*l.*) This clause will be omitted if the mortgage contains no power of attorney, and the latter part of it will be omitted if the mortgagor is not a party to the transfer.

It has now become the practice to give the power of attorney to the mortgagee "and the persons deriving title under him," and in view of the Conv. Act, 1882, ss. 8 and 9. it is probable that this will be held valid.

Devolution of power of attorney.

If the mortgagor joins and has not incumbered his equity of redemption then, instead of clause 3, he should enter into a new declaration of trust of the head term, give a new power to appoint new trustees and a new irrevocable power of attorney in accordance with Forms Nos. 11A, 11B, and 11C, *sup.*

Variation where mortgagee has not incumbered.

Recital of  
Mortgage.

WHEREAS these presents are supplemental to an Indenture (hereinafter called the Principal Indenture) dated, &c., whereby (after recitals whereby it appeared that under an Indenture dated the — day of — (hereinafter called the Settlement) a term of 1,000 years, without impeachment of waste, in the hereditaments in the County of — thereby settled was then vested in the parties to the Principal Indenture of the 2nd part (hereinafter called the Trustees) upon trusts for raising the sum of £8,000 for —, deceased, and that the said sum was then payable to her children, parties of the 1st part to the Principal Indenture, and that the Borrower was entitled to the inheritance of the hereditaments comprised in the said term, and had paid the sum of £2,000 in part discharge of the said sum of £8,000, leaving a balance of £6,000 unpaid in respect thereof), in consideration of £6,000 paid by the Transferor to the parties of the 1st part to the Principal Indenture in equal shares, they assigned the said sum of £6,000 remaining charged on the said settled hereditaments and the interest to become due for the same unto the Transferor, And whereby the Trustees assigned all the hereditaments comprised in the Settlement unto the Transferor for the residue of the said term of 1,000 years by way of mortgage for securing payment to him of the said sum of £6,000 and interest thereon at the rate of £4 per cent. per annum :

State of  
mortgage debt.

AND WHEREAS the said sum of £6,000 now remains owing to the Transferor on the aforesaid security, but all interest thereon has been paid as he hereby acknowledges :

Title to  
equity of  
redemption.

AND WHEREAS the Borrower is now absolutely entitled in possession to or has a general power of appointment over the fee simple in possession of the premises comprised in the Principal Indenture, subject to the security thereby made and to several other incumbrances, and at his request the Mortgagee has agreed to pay to the Transferor the sum of £6,000 upon having such transfer as is hereinafter contained of the said mortgage debt of £6,000 and interest and the securities for the same :

Agreement  
for transfer.

NOW THIS INDENTURE WITNESSETH as follows :—

Assignment  
of debt.

1. (*Assignment of mortgage debt, &c., as in Precedent VI. of this Section, p. 960, sup.*)

Assignment  
of term.

2. For the consideration aforesaid the Transferor; As Mortgagee,

by the direction of the Borrower, hereby conveys and the Borrower (*m*) hereby conveys and confirms unto the Mortgagee

ALL the hereditaments assigned by the Principal Indenture and now vested in the Transferor, subject to redemption thereunder, Parcels.

TO HOLD unto the Mortgagee for the residue of the said term of 1,000 years, subject to the right of redemption subsisting therein under the Principal Indenture on payment of the said principal sum of £6,000 and the interest thereon. Habendum.

3. (*Add Form No. 49 and any other special clauses required for extending the provisions of the Principal Indenture. Also a covenant to pay principal and interest, see Prec. VII., p. 960, sup.*)

IN WITNESS, &c.

### No. XX.

TRANSFER of PART of MONEY secured by MORTGAGE, and  
CONVEYANCE of the MORTGAGED PROPERTY, so as to vest in  
TRANSFEROR and MORTGAGEE jointly (*n*).

THIS INDENTURE, made, &c. (*Parties, definitions and first recital, as in Precedent I. of this Section, p. 953, sup.*):

AND WHEREAS the said principal sum of £2,000 remains owing to the Transferor, but all interest thereon has been paid up to the date of these presents : State of mortgage debt.

AND WHEREAS the Mortgagee has agreed to pay to the Transferor the sum of £500, upon the Transferor effecting such assignment and conveyance as hereinafter appearing : Agreement for partial transfer.

NOW THIS INDENTURE WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £500 now paid by the Mortgagee to the Transferor (the receipt of which sum the Transferor hereby acknowledges), the Transferor, As Mortgagee, hereby assigns unto the Mortgagee Transferor assigns part of mortgage debt to Mortgagee.

(*n*) Where the borrower has incumbered his equity of redemption, it seems that he ought not to give any covenants for title. Any extension of the provisions of the original mortgage will be subject to the rights of the mesne incumbrancers. Covenant for title by borrower in a transfer.

(*n*) Sometimes the mortgagee of part is satisfied with a declaration of trust from the transferor, without any conveyance of the mortgaged property to vest in the two jointly. An assignment of part of a mortgage debt is not a desirable transaction ; the intention of the parties can be better effected by means of a sub-mortgage. Declaration of trust.

Notice of this transfer should be indorsed on the mortgage.

Notice.

One sum of £500, part of the principal sum of £2,000 secured by the Principal Indenture :

AND all interest henceforth to become due on the said sum of £500,

To HOLD unto the Mortgagee absolutely.

Conveyance to Mortgagee and Transferor jointly, subject to equity of redemption.

2. For the consideration aforesaid the Transferor, As Mortgagee, hereby conveys unto the Mortgagee

ALL the hereditaments comprised in the Principal Indenture,

To HOLD unto the Mortgagee in fee simple, To THE USE of the Mortgagee and Transferor in fee simple, subject to such right of redemption as is now subsisting therein under the Principal Indenture, upon payment to the Transferor of the said sum of £500 and interest hereby assigned, and to the Mortgagee of the sum of £1,500 (residue of the said principal sum of £2,000) and the interest thereon.

Mutual agreement to concur in calling in principal money at request of either party.

3. THE said Transferor and Mortgagee hereby mutually agree that if one of them or the persons deriving title under him shall request the other of them or the persons deriving title under him to concur with him or them in calling in the said principal sum of £2,000, or that part thereof to which the requesting person or persons shall be entitled, or in enforcing or obtaining payment thereof, or any interest due in respect thereof, either by exercising the statutory power of sale or otherwise, then and in such case the person or persons to whom such request shall be made shall comply with the same, on being indemnified by the person or persons so requesting against all costs and expenses consequent thereon.

IN WITNESS, &c.

## No. XXI.

TRANSFER of PART of MONEY secured on a CONTRIBUTORY MORTGAGE where the TRANSFEROR holds a DECLARATION of TRUST executed to him by the MORTGAGEES (*written at the foot of the declaration of trust*).

KNOW ALL MEN by these presents that I, the above-named C. D. (*Transferor*), do this — day of — 19—, in consideration of the sum of £— now paid to me by E. F. (*Mortgagee*), of, &c. (the receipt whereof I hereby acknowledge), hereby assign unto the said E. F. the principal sum of £— to which I am entitled under the above-

Assignment by Transferor to Mortgagee

written Indenture and the declaration of trust thereby made,  
And all interest henceforth to become due thereon,

To HOLD unto the said E. F. absolutely :

AND I HEREBY COVENANT with the said E. F. that I have not and covenant.  
received any part of the said sum of £——, and have not done  
anything whereby I am prevented from assigning the same to  
him in manner aforesaid (o).

IN WITNESS, &c.

## NO. XXII.

TRANSFER *for keeping alive* PART of a MORTGAGE DEBT  
*paid off by a* TENANT FOR LIFE *and* RELEASE of PART of  
*the* SECURITY *to the uses of a* SETTLEMENT (p).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and Parties.  
C. D., of, &c. (hereinafter called the Mortgagees), of the 1st  
part, E. F., of, &c. (hereinafter called the Tenant for Life), of the  
2nd part, and G. H., of, &c., and K. L., of, &c. (hereinafter  
called the Trustees), of the 3rd part :

(*Recite Settlement*, “ hereinafter called the Settlement,” *showing* Recitals of  
*joint power of appointment or other power of mortgaging, or show* “ Settlement”  
*that powers to mortgage under S. L. Acts became exercisable, also* and of “ Prim-  
*show title of Tenant for Life and appointment of S. L. Act Trustees* icipal Inden-  
*and any deaths, &c., material. Then make the deed supplemental* ture.”  
*to the Mortgage* (hereinafter called the Principal Indenture), *and*  
*recite any transfers*):

AND WHEREAS the Tenant for Life has out of his own money on Payment of  
or before the execution of these presents paid to the Mortgagees part of mort-  
the sum of £—— towards satisfaction of the sum of £—— gage debt by  
secured by the Principal Indenture, thus leaving the sum of Tenant for  
£——, with the current interest thereon, due to the Mortgagees Life.  
on the security of that Indenture :

AND WHEREAS upon such payment being made as aforesaid it Agreement to  
was agreed that the Mortgagees should assign the sum of £——, assign part of  
mortgage debt

(o) This deed merely passes the equitable chose in action; the legal Equitable  
interest in the whole mortgage debt is vested in the trustees nominated to chose in  
act as mortgagees. action.

(p) See *Alderson v. Elguy* (1884), 26 Ch. D. 566.

and to release  
part of  
security.

part of the said mortgage debt, to the Tenant for Life and execute such release as is hereinafter contained of part of the hereditaments comprised in the Principal Indenture :

NOW THIS INDENTURE WITNESSETH as follows:—

Assignment of  
part of mort-  
gage debt to  
Tenant for Life  
to be kept  
alive.

1. (i.) IN pursuance of the said agreement and in consideration of the sum of £—— paid by the Tenant for Life to the Mortgagees (the receipt of which sum the Mortgagees hereby acknowledge), the Mortgagees, As Mortgagees, hereby assign unto the Tenant for Life

ALL THAT the principal sum of £—— (part of the principal sum of £—— originally secured by the Principal Indenture), together with the benefit of all securities for the said sum of £——,

Habendum.

TO HAVE AND RECEIVE the same unto the Tenant for Life absolutely (*q*), To the Intent that the same may be kept alive for his benefit and be dealt with and disposed of by his personal representatives as part of his personal estate, but so that during his lifetime the Tenant for Life shall remain liable to keep down the interest (if any) on the principal sum hereby assigned :

Protection of  
powers of  
Mortgagees.

(ii.) PROVIDED ALWAYS, that (notwithstanding the foregoing assignment) the Mortgagees and the persons deriving title under them shall, in favour of a Purchaser or other person acquiring any interest in the hereditaments for the time being remaining subject to the Principal Indenture for money or money's worth, have and may exercise all the powers of sale, leasing and other powers conferred by or implied under the Principal Indenture without the concurrence of the person or persons for the time being interested in the sum of £—— hereinbefore assigned, and in like manner in all respects as if the sum of £—— had been paid by the Tenant for Life towards discharging the principal money secured by the Principal Indenture for the benefit of the inheritance :

As to the  
application of  
the balance of  
the proceeds  
of sale in  
discharge of  
the claims of  
the Tenant for  
Life.

(iii.) PROVIDED, nevertheless, that on any exercise of the power of sale conferred by or implied under the Principal Indenture the balance of the proceeds of sale not required to answer the principal sum of £—— (remaining owing to the Mortgagees on the

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(*q*) Under the old practice the debt would have been transferred to a trustee. This gives rise to unnecessary costs; the declaration is sufficient to keep the debt alive.

security of the Principal Indenture), and the interest thereon and costs shall be applied (unless the Tenant for Life otherwise directs) in or towards discharging the said sum of £—— hereinbefore assigned, but no Purchaser or other person acquiring any interest for money or money's worth from the Mortgagees or the persons deriving title under them shall be concerned to see or inquire whether the said sum of £—— hereinbefore assigned or any part thereof has been discharged or otherwise as to the application of the proceeds of sale :

(iv.) PROVIDED FURTHER, that on payment of all the principal money, interest and costs secured by or payable under the Principal Indenture (other than the said sum of £—— hereinbefore assigned), then and in such case the premises comprised in the Principal Indenture shall be transferred to the Tenant for Life or his representatives as security for the said sum of £—— and the interest (if any) payable in respect of the same, unless the Tenant for Life otherwise directs.

As to when Principal Indenture is to be transferred to Tenant for Life.

2. IN further pursuance of the said agreement and for the consideration aforesaid, the Mortgagees, As Mortgagees and according to their estate and interest, but not further or otherwise, hereby convey and release and the Tenant for Life, As Mortgagee (r), hereby releases and confirms unto the Trustees

Release of part of security to uses of the Settlement.

ALL THOSE, &c. (*see Forms in Sect. II., Purchase Deeds*).

[AND ALL other (if any) the hereditaments comprised in and demised by the Leases mentioned in the Schedule hereto],

To HOLD unto the Trustees in fee simple [subject to and with the benefit of the respective Leases mentioned in the Schedule hereto so far as they respectively affect the premises or any part thereof, but], discharged from the said aggregate principal sum of £—— (s) and the interest thereon secured by the Principal Indenture and from all claims under that Indenture, and so discharged To THE USES, Upon the trusts, and subject to the powers and provisions which under the Settlement or any power of charging therein contained or otherwise were immediately before the execution of these presents subsisting or capable of

Habendum (subject to Leases) to uses of Settlement.

(r) By payment of part of the debt the tenant for life has become a mortgagee, hence should join in the release. Where land is conveyed subject to leases it is desirable to add general words in the parcels to make it clear that the whole of the reversions are conveyed.

(s) The aggregate sum owing to the mortgagees and tenant for life.

taking effect with respect to the equity of redemption in the premises, but not so as to increase or multiply charges or powers of charging.

Acknowledgment of right to production (t).

3. The Mortgagees hereby acknowledge the right of the Tenant for Life to production of the Principal Indenture (*and any transfers*), and to delivery of copies thereof.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

| Date of Lease. | Names of Lessees. | Property Demised. | Term. | Yearly Rent. |
|----------------|-------------------|-------------------|-------|--------------|
|                |                   |                   |       |              |

SECTION III.

CONSOLIDATING MORTGAGES.

No. I.

TRANSFER of MORTGAGE of FREEHOLDS and FURTHER CHARGE *where no ADDITIONAL PROPERTY is added to the SECURITY (a).*

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Transferor), of the 1st part, C. D., of, &c. (hereinafter called the Borrower), of the 2nd part, and E. F., of, &c. (hereinafter called the Mortgagee), of the 3rd part :

Recital of Mortgage.

WHEREAS these presents are supplemental to an Indenture of Mortgage (hereinafter called the Principal Indenture) dated the — day of — (*continue recital of Mortgage for £5,000, as in Form No. 1A, so far as the Form relates to freeholds*) :

Stamp.

(t) This is required in case the land is sold by the mortgagees under their power of sale ; also on the death of the tenant for life his representatives must be able to prove their title to the debt assigned to him.  
(u) The stamp will be 6*d.* per £100 *ad valorem* duty on the amount transferred and 2*s.* 6*d.* per £100 *ad valorem* duty on the further advance : Stamp Act, 1891, s. 87 (3).

AND WHEREAS the said principal sum of £5,000 is still due to the Transferor upon the security of the Principal Indenture, but all interest thereon has been paid up to the date hereof, as he hereby acknowledges :

State of mortgage debt.

AND WHEREAS (*Form No. 2c*) :

Agreement for transfer and further advance.

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £5,000 now paid by the Mortgagee to the Transferor by the direction of the Borrower (the receipt of which sum the Transferor hereby acknowledges), the Transferor, As Mortgagee and by the direction of the Borrower, hereby assigns unto the Mortgagee

Assignment of original mortgage debt and interest.

ALL THAT the principal sum of £5,000 secured by the Principal Indenture and all interest henceforth to become due thereon and the full benefit of and the right to exercise and enforce all powers and securities for compelling payment of the said sum and interest,

To HAVE AND RECEIVE the same unto the Mortgagee absolutely (*x*).

2. IN further pursuance of the said agreement and in consideration of the said sum of £5,000 paid by the Mortgagee in manner aforesaid and of the further sum of £1,000 now paid by the Mortgagee to the Borrower (the receipt of which sum of £1,000 and the payment of which sum of £5,000 the Borrower hereby acknowledges), the Borrower hereby covenants with the Mortgagee (*Covenant to pay the £6,000 and interest, Forms Nos. 4 and 6, saying in Form No. 6 so long as any principal money remains due under the Principal Indenture or these presents*).

Covenant to pay the aggregate debt and interest.

3. For the considerations aforesaid the Transferor, by the direction of the Borrower and As Mortgagee, hereby conveys and releases and the Borrower, As Beneficial Owner, hereby conveys and confirms unto the Mortgagee

Conveyance of freeholds subject to a new proviso for redemption.

ALL AND SINGULAR the lands and hereditaments comprised in and conveyed by the Principal Indenture,

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(*x*) The original debt is assigned in order to retain its priority.

The mortgagee (not having been in possession) is bound to assign the debt and transfer the estate by the direction of the mortgagor: Conv. Act, 1881, s. 15; but subject to the right of an incumbrancer requiring assignment and transfer: Conv. Act, 1882, s. 12.

To HOLD unto and To THE USE of the Mortgagee in fee simple, discharged from the right of redemption now subsisting under the Principal Indenture, but subject to the proviso for redemption hereinafter contained (that is to say):—

Proviso for redemption.

4. PROVIDED ALWAYS, that on payment on the — day of — next by the Borrower or the persons deriving title under him to the Mortgagee or the persons deriving title under him (*continue Forms Nos. 9 and 9B referring to the aggregate sum*).

Covenants in Principal Mortgage to apply.

5. THE Borrower hereby covenants with the Mortgagee that all the covenants and provisions in the Principal Indenture shall apply and have effect for securing the payment of the aggregate principal money and interest hereby covenanted to be paid in the same manner as if the same had been originally secured by the Principal Indenture.

Provisions for reduction of interest and term of loan to apply.

6. THE provision for the reduction of the rate of interest contained in the Principal Indenture, and the provision therein contained restricting the right of calling in and paying off the principal money shall apply to and include the said further advance of £— and the interest thereon in like manner as if the aggregate principal sum of £— had been secured by the Principal Indenture (*y*).

7. (*Add Form No. 49 and other special clauses as required (z).*)

IN WITNESS, &c.

## NO. II.

### TRANSFER of MORTGAGE of FREEHOLDS and FURTHER CHARGE where ADDITIONAL FREEHOLDS are added to the SECURITY.

THIS INDENTURE, made, &c. (*continue as in last Precedent down to the end of the recital of the state of the mortgage debt*):

Seisin of Borrower of the additional property.

AND WHEREAS the Borrower is seised of the further hereditaments mentioned in the Schedule hereto for an estate in fee simple in possession free from incumbrances:

(*y*) This clause will only be added when applicable.

(*z*) In preparing a deed of this kind it should always be considered by the transferee whether the clauses in the mortgage are sufficient, *e.g.*, whether there are provisions as to the power of sale and as to registration: Forms Nos. 15 and 18. Such clauses, if necessary, can be added in the text. If the mortgagor has incumbered his equity of redemption they will of course take effect subject to the rights of the mesne incumbrancers.

AND WHEREAS the Mortgagee has agreed, at the request of the Borrower (*continue as in last Precedent*):

Agreement for transfer and further advance.

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows:—

1. IN pursuance of the said agreement and in consideration, &c. (*continue as in clause 1 of the last Precedent*).

Assignment of original mortgage debt and interest.

2. IN further pursuance, &c. (*continue as in clause 2 of the last Precedent*).

Covenant to pay the aggregate mortgage debt and interest.

3. FOR the consideration aforesaid the Transferor, by the direction of the Borrower and As Mortgagee (*continue as in clause 3 of the last Precedent*).

Conveyance of freeholds comprised in the Mortgage subject to new proviso for redemption.

4. FOR the consideration aforesaid the Borrower, As Beneficial Owner, hereby conveys unto the Mortgagee

Conveyance of additional hereditaments

ALL AND SINGULAR the lands and hereditaments situated, &c., containing, &c., and more particularly described in the Schedule hereto and delineated upon the plan drawn on these presents and thereon coloured —,

TO HOLD unto and TO THE USE of the Mortgagee in fee simple, subject to the proviso for redemption hereinafter contained.

5. PROVIDED ALWAYS, that on payment (*continue as in clause 4 of the last Precedent*).

Proviso for redemption.

6. THE Borrower hereby covenants with the Mortgagee that all the covenants and provisions contained in the Principal Indenture shall apply and have effect with respect to the hereditaments mentioned in the Schedule hereto, and also for securing payment of the aggregate principal sum of £—— and the interest thereon hereby covenanted to be paid, in the same manner as if that sum had been originally secured by the Principal Indenture and as if those hereditaments had been thereby conveyed for securing the payment of that sum and the interest thereon, and as if that sum and all the hereditaments hereby conveyed had been actually mentioned and included in the covenants and provisions contained in the Principal Indenture.

Covenants in the Mortgage Deed to apply.

[7. THE provision for reduction of the rate of interest contained in the Principal Indenture, and also the provision contained therein restricting the right of calling in or paying off the principal money, shall apply to and include the principal money and interest hereby secured in like manner as if the said aggregate principal sum of £—— had been originally secured by the Principal Indenture and the covenants and provisions

[Provisions for reduction of interest and term of advance to apply.]

of the Principal Indenture had applied to the hereditaments hereby conveyed in the manner in which the same are so applied by the covenant of the Borrower hereinbefore contained (a).]

(Add Form No. 49 and other special clauses as required.)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Particulars of the additional hereditaments hereby conveyed.

### No. III.

TRANSFER of TWO MORTGAGE DEBTS and the SECURITIES  
for EACH, and CONVEYANCE of ADDITIONAL PROPERTY by  
MORTGAGOR to create a CONSOLIDATED SECURITY for both  
DEBTS and a FURTHER ADVANCE.

Parties.

THIS INDENTURE (b), made the — day of —, 19—,  
BETWEEN C. D., of, &c. (*one Transferor*), of the 1st part, E. F.,  
of, &c. (*other Transferor*), of the 2nd part, A. B., of, &c. (herein-  
after called the Borrower), of the 3rd part, and G. H., of, &c.  
(hereinafter called the Mortgagee), of the 4th part:

Recite two  
Mortgages of  
separate  
properties.

WHEREAS (*Recite Mortgage, defining it as* "the Mortgage of  
1890," to C. D., of "the hereditaments first hereinafter  
described," to secure £500 and interest):

AND WHEREAS (*Recite Mortgage, defining it as* "the Mortgage  
of 1900," to E. F., of "the hereditaments secondly hereinafter  
described," to secure £200 and interest):

Seisin of  
Borrower.

AND WHEREAS the Borrower is seised in fee simple of the  
hereditaments first, secondly, and thirdly hereinafter described,  
subject as to the hereditaments first and secondly hereinafter  
described to the Mortgages of 1890 and 1900, but otherwise free  
from incumbrances:

That mort-  
gage money  
remains owing  
on both Mort-  
gages.

AND WHEREAS the said sum of £500 remains owing to the said  
C. D. on the security of the Mortgage of 1890, but all interest  
thereon has been paid up to the date of these presents:

---

(a) This clause will only be used when applicable, and see notes to last  
Precedent.

(b) Where there are many mortgage debts to be assigned the best way is  
for the mortgagee to take separate transfers, see next Precedent.

AND WHEREAS the said sum of £200 remains owing to the said E. F. on the security of the Mortgage of 1900, but all interest thereon has been paid up to the date of these presents :

AND WHEREAS the Mortgagee has agreed, at the request of the Borrower, to pay to the said C. D. the sum of £500, and to the said E. F. the sum of £200, and to advance to the Borrower the further sum of £400 upon having transfers of the said respective mortgage debts of £500 and £200, and the securities for the same respectively, and upon having the repayment of the said sums of £500, £200, and £400 respectively (making together the aggregate sum of £1,100) and interest, secured in manner hereinafter appearing :

Agreement for transfers and further advance.

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £500 now paid by the Mortgagee to the said C. D., at the request of the Borrower (*the receipt, &c.*), the said C. D., As Mortgagee and by the direction of the Borrower, hereby assigns, &c. (*Assignment of mortgage debt of £500 and interest, secured by the Mortgage of 1890, as in Precedent I. of this Section*).

One Mortgagee assigns his mortgage debt to new Mortgagee.

2. IN further pursuance of the said agreement and in consideration of the sum of £200 now paid by the Mortgagee to the said E. F. at the request of the Borrower (*the receipt, &c.*), the said E. F., As Mortgagee and by the direction of the Borrower, hereby assigns, &c. (*Assignment of mortgage debt of £200 and interest, secured by the Mortgage of 1900, as in Precedent I. of this Section*).

Another Mortgagee assigns his debt.

3. IN consideration of the several sums of £500 and £200 paid by the Mortgagee to the said C. D. and E. F. respectively as aforesaid, and of the sum of £400 paid by the Mortgagee to the Borrower (*the receipt, &c.*), the Borrower hereby covenants with the Mortgagee, &c. (*to pay principal sum of £1,100 and interest, Forms Nos. 4 and 6*).

Covenant to pay principal and interest.

4. FOR the consideration aforesaid the said C. D., As Mortgagee, as to the hereditaments first hereinafter described, and the said E. F., As Mortgagee, as to the hereditaments secondly hereinafter described, each of them by the direction of the Borrower and according to their respective estates and interests, hereby respectively convey and the Borrower, As Beneficial

Mortgagees and Mortgagor convey the hereditaments comprised in the existing Mortgages, and additional hereditaments

Owner, as to all the hereditaments hereinafter described hereby conveys and confirms unto the Mortgagee,

FIRST, ALL, &c. (*parcels, as in the mortgage to C. D.*), AND all other (if any) the hereditaments comprised in the Mortgage of 1890 :

SECONDLY, ALL, &c. (*parcels, as described in mortgage to E. F.*), AND all other (if any) the hereditaments comprised in the Mortgage of 1900 :

AND, THIRDLY, ALL, &c. (*additional parcels*),

to new Mortgagee, subject to proviso for redemption.

To HOLD unto and To THE USE of the Mortgagee in fee simple, discharged, as to the hereditaments comprised in the Mortgages of 1890 and 1900 respectively, from all right of redemption now subsisting therein under those Mortgages respectively, but subject as to all the said hereditaments to the proviso for redemption following (that is to say) :—

5. PROVIDED ALWAYS (*proviso for redemption on payment of £1,100 and interest, Forms Nos. 9 and 9B.*)

6. PROVIDED ALWAYS, &c. (*Form No. 15.*)

7. (*Add new covenant to insure, Form No. 19.*)

8. (*Covenant not to register, Form No. 18.*)

9. (*Add Form No. 30 or 32, provision for reduction of rate of interest.*)

10. (*Add Form No. 49 and other special provisions as required.*)

IN WITNESS, &c. (*bb*).

#### No. IV.

MORTGAGE to secure a CONSOLIDATED DEBT consisting of  
MORTGAGE DEBTS transferred by separate deeds and a  
Further Advance (*c*),

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part :

Recital of title of Borrower, subject to several Mortgages in first schedule.

WHEREAS the Borrower is seised in fee simple in possession of the freehold hereditaments hereinafter described, subject to the several mortgage debts amounting to an aggregate sum of

(*bb*) Where several mortgage debts are consolidated and new security is added, the provisions of the original mortgages cannot always be made applicable to the whole security ; *cf.* Clause 5 in Prec. I. of this Section.

Stamp.

(*c*) The stamp will be *ad valorem* on the further advance only ; it should be adjudicated.

£50,000, secured by the several Indentures of Mortgage mentioned in the first Schedule hereto, with interest thereon as therein mentioned, but all such interest has been duly paid up to the date of these presents :

AND WHEREAS the Mortgagee has, at the request of the Borrower, paid to the several persons mentioned in the third column of the said Schedule the amounts of the mortgage debts owing to them respectively on the security of the said Indentures of Mortgage, and has taken transfers of such mortgage debts and of the securities for the same respectively by the transfers mentioned in the fourth column of the same Schedule :

That the existing Mortgages have been transferred to the Mortgagee.

AND WHEREAS the Mortgagee has agreed to lend to the Borrower the further sum of £10,000, upon having the repayment of both the said sums of £50,000 and £10,000 (making together the aggregate sum of £60,000), with interest thereon, secured in manner hereinafter appearing :

Agreement for further advance.

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the sum of £50,000 paid by the Mortgagee for obtaining transfers of incumbrances as aforesaid, and of the sum of £10,000 now paid by the Mortgagee to the Borrower (the payment and receipt in manner aforesaid of which said sums of £50,000 and £10,000, making the aggregate sum of £60,000, the Borrower hereby acknowledges), the Borrower, &c. (*Covenant to pay principal sum of £60,000 and interest, Forms Nos. 4 and 6*).

Covenant to pay principal and interest.

2. FOR the consideration aforesaid the Borrower, As Beneficial Owner, hereby conveys and confirms unto the Mortgagee (*parcels by reference to second schedule and plan*) :

Conveyance to Mortgagee.

TO HOLD unto and TO THE USE of the Mortgagee in fee simple, discharged from all right of redemption now subsisting therein under the Indentures of Mortgage mentioned in the first schedule hereto, but subject to the proviso for redemption hereinafter contained (that is to say) :—

3. PROVIDED ALWAYS (*Proviso for redemption on payment of £60,000 and interest, Forms Nos. 9 and 9B*).

4. (*Add new covenant to insure, Form No. 19.*)

5. (*Provision as to purchaser not being concerned, &c., Form No. 15.*)

6. (*Add Form No. 49 and other special provisions as required.*)

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

Particulars of Mortgages which have been transferred to the Mortgagee.

| Principal Sums Secured. | Dates of Original Mortgages. | Names of Mortgagees. | Dates of Transfers. |
|-------------------------|------------------------------|----------------------|---------------------|
| £                       |                              |                      |                     |
| 1. 25,000               | 3 Feb. 1884                  | P.                   | — day of —, 19—.    |
| 2. 15,000               | 15 Mar. 1888                 | Q.                   | „                   |
| 3. 10,000               | 20 Dec. 1891                 | R.                   | „                   |
| Total    £50,000        |                              |                      |                     |

THE SECOND SCHEDULE ABOVE REFERRED TO.

*(To contain particulars of the whole of the property.)*

PART IV.

RECONVEYANCES AND RELEASES OF MORTGAGES.

No. I.

RECONVEYANCE of FREEHOLDS. VARIATIONS *where there has been a TRANSFER of the MORTGAGE or a FURTHER CHARGE (a), or the RELEASE is PARTIAL.*

THIS INDENTURE, &c., BETWEEN A. B., of, &c. (hereinafter called the Mortgagee), of the one part, and C. D., of, &c. (hereinafter called the Borrower), of the other part :

Parties.

WHEREAS these presents are supplemented to an Indenture of Mortgage (hereinafter called the Principal Indenture) dated the — day of —, and made between the Borrower of the one part, and the Mortgagee [*or if there has been a Transfer*, E. F. (hereinafter called the Original Mortgagee)] of the other part, whereby certain freehold hereditaments known as the — Estate, situated at —, in the County of —, were [*or if the Mortgagee is*

Recital of Mortgage.

(a) The stamp will be 6*d.* for every £100 and part of £100 of the total amount or value of the money at any time secured. The *ad valorem* duty is payable only on the final discharge: *Mauro v. Inland Revenue Commrs.*, 1896, W. N. 149; *Highmore*, 2nd ed., 173.

Stamps on reconveyances, &c.

Where the mortgage is only equitable, as under an agreement to make a mortgage, or a mortgage of the equity of redemption, no reconveyance is necessary. It is sufficient if a receipt for the mortgage debt and interest is indorsed and witnessed and the security delivered back to the mortgagor; and according to the present practice of the Inland Revenue authorities, a simple receipt, with nothing more, so indorsed does not require *ad valorem* duty as a reconveyance or "discharge," see Stamp Act, 1891, First Schedule, "Mortgage" (5); and is exempt from the penny receipt stamp: *ib.*, "Receipt," Exemption (11). If, however, the receipt contains any such words as "in discharge," the *ad valorem* duty is required, see *Alpe*, 11th ed., 177; *Highmore*, 2nd ed., 174; *Firth, &c. v. Inland Revenue Commrs.*, 1904, 2 K. B. 205; 73 L. J. K. B. 632.

No reconveyance of equitable mortgage necessary.

Stamp.

*only releasing part of his security, say* “the hereditaments herein-after described were with other hereditaments”] conveyed by the Borrower to the Mortgagee [Original Mortgagee] in fee simple, subject to redemption (*b*) on payment by the Borrower to the Mortgagee [the Original Mortgagee and the persons deriving title under him] of a sum of £—— and interest thereon as therein mentioned :

[Variation where there has been a Transfer.]

[Variation where there has been a Further Charge.]

[AND WHEREAS by an Indenture of Transfer dated, &c. (*continue recital of Transfer, as in Form No. 2*)]:

[AND WHEREAS by an Indenture (hereinafter called the Further Charge) dated, &c., and made between the Borrower of the one part, and the Mortgagee of the other part, the Borrower charged the hereditaments comprised in the Principal Indenture with the payment to the Mortgagee of the further sum of £—— (making, with the said sum of £——, the aggregate principal sum of £——) and interest thereon as therein mentioned]:

That mortgage debt payable and agreement for reconveyance.

Variations where a Further Charge.

AND WHEREAS the said [aggregate] principal sum of £—— now remains due to the Mortgagee upon the security of the Principal Indenture and [Further Charge], but all interest thereon has been paid, as he hereby acknowledges, and he has agreed upon receiving the said [aggregate] principal sum [*or if the Mortgagee is releasing only part of his security, say* “the sum of £——”] to execute such reconveyance [release] as hereinafter appearing :

Reconveyance. Variations where Further Charge

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Borrower to the Mortgagee (the receipt of which sum the Mortgagee hereby acknowledges), the Mortgagee As Mortgagee, hereby conveys and releases unto the Borrower

ALL (*c*) AND SINGULAR the lands and hereditaments conveyed by, and comprised in the Principal Indenture, or which are now by any means vested in the Mortgagee, subject to redemption under the Principal Indenture [and the Further Charge],

Habendum.

To HOLD unto and To THE USE of the Borrower in fee simple, discharged from all principal money and interest secured

(*b*) Compare this recital with Form No. 1A. Here the point to bring out is the title to the equity of redemption.

Variation where release is partial.

(*c*) Where the mortgagee is releasing only part of his security the land released must be described here or by reference to a schedule, and the mortgagee should be expressed to convey “according to his estate and interest.” The stamp in this case is 10s.

by and from all claims under the Principal Indenture [and Further Charge, or either of them](*d*).

IN WITNESS, &c. (*e*).

(*d*) In the case of a partial release add an acknowledgment of the right of the borrower to production of the documents retained in the custody of the mortgagee.

For a Form of a partial release of freeholds to the uses of a settlement, see Transfers of Mortgages, Prec. XXII., Sect. II., p. 977, *sup*.

Where a mortgage of copyholds is paid off out of capital money, if the mortgagee has been admitted he should surrender to the use of the S. L. Act trustees, (see note to Prec. IV., *inf*.), who will then be admitted discharged from all claims under the conditional surrender.

If there has been a conditional surrender and no admission, the mortgagee must give a warrant to enter up satisfaction, see Prec. IV., *inf*., and notes thereto.

If the mortgage has been created by a conveyance of a tenant for life operating as a conditional surrender under S. L. Act, 1882, s. 20, without admission, then the mortgagee must give a warrant to enter up satisfaction of the enrolled conveyance, and should also by deed release the copyholds to the S. L. Act trustees by the direction of the tenant for life, *cf*. Prec. IV., *inf*.

If there has only been a covenant to surrender (which might be the case if the mortgage was created before the date of the settlement), then the mortgagee should release the covenant to the tenant for life (Prec. III., *inf*., may be adapted) as the person to give effect to the covenant: S. L. Act, 1890, s. 6.

If the mortgage is by sub-demise, then the mortgagee will surrender the derivative term to the S. L. Act trustees (the head term being vested in them) by the direction of the tenant for life, so as to merge the derivative term, see the operative part of Prec. V., *inf*.

If the mortgage is by assignment, then the mortgagee must, by the direction of the tenant for life, assign the term to the S. L. Act trustees "discharged from all claims under the mortgage, but Upon the trusts which under the settlement or otherwise were immediately before the execution of these presents subsisting or capable of taking effect with respect to the equity of redemption in the premises," see S. L. Act, 1882, s. 21 (3).

In the case of a trust for sale freeholds will be conveyed "unto and to the use" of the trustees for sale in fee simple on the trusts of the conveyance on trust for sale (the settlement, if any, relating to the proceeds of sale should not be referred to) or of the Will creating the trust for sale. Copyholds will either be surrendered or released to the use of the trustees and their heirs or a warrant given to enter up satisfaction of a conditional surrender, as the case requires. Leaseholds, if the mortgage is by sub-demise, will be surrendered to the trustees so as to merge the derivative term. If the mortgage is by assignment, then the term will be assigned to the

Reconveyance of freeholds to uses of a settlement.

Release of settled copyholds from a mortgage.

Release of mortgage where the equity of redemption is held on trust for sale.

Release of mortgage where the equity of redemption is held on trust for sale.

## No. II.

RECONVEYANCE of FREEHOLDS, *where there have been several FURTHER CHARGES and TRANSFERS.*

THIS INDENTURE, made, &c. (*Parties as in the last Precedent*) :

Description of  
prior deeds.

WHEREAS (*f*) these presents are supplemental to the following deeds (namely): (1) an Indenture of Mortgage (hereinafter called the Principal Indenture), dated, &c., and made, &c., being a mortgage, &c.; (2) An Indenture of Further Charge, &c. (*mention the several deeds of Further Charge and Transfer of Mortgage*) :

Recital that  
all principal  
money and  
interest have  
been paid.

AND WHEREAS all principal money and interest secured by the Principal Indenture and the said Indentures of Further Charge respectively have been paid and satisfied before the execution of these presents as the Mortgagee hereby acknowledges :

NOW THIS INDENTURE WITNESSETH that in consideration of all principal money and interest having been paid as aforesaid (the receipt of which the Mortgagee hereby acknowledges), the Mortgagee, As Mortgagee, hereby conveys unto the Borrower

Reconveyance.

ALL the lands and hereditaments comprised in the Principal Indenture,

To HOLD unto and To THE USE of the Borrower in fee simple, discharged from all principal money and interest secured by and

trustees on the trusts of the conveyance on trust for sale or of the Will creating the trust for sale.

By indorse-  
ment

(*e*) If the reconveyance is effected by an indorsed deed, say :—

THIS INDENTURE, made the — day of —, 19—, BETWEEN the within-named C. D. (hereinafter called the Mortgagee) of the one part, and the within-named A. B. (hereinafter called the Borrower) of the other part :

WITNESSETH that, &c. (*the rest the same as Prec. I., substituting “the within-written Indenture” for “the Principal Indenture”*).

IN WITNESS, &c.

(*f*) If desired, the further charges and transfers can be inserted in schedules, see Prec. V. of Transfers of Mortgages, p. 959, *sup.*

from all claims under the Principal Indenture and the said Indentures of Further Charge, or any of them.

IN WITNESS, &c.

### No. III.

#### RELEASE of COPYHOLDS *where there has been no SURRENDER (g).*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Mortgagee), of the one part, and C. D., of, &c. (hereinafter called the Borrower), of the other part :

Parties.

WHEREAS these presents are supplemental, &c. (*continue as in Form No. 1A so far as it relates to copyholds*) :

Recital of Mortgage.

AND WHEREAS no surrender has been made of the copyhold hereditaments comprised in the Principal Indenture pursuant to the covenant for that purpose therein contained :

That no surrender made.

AND WHEREAS the said Principal sum of £—— now remains due to the Mortgagee, on the security of the Principal Indenture, but all interest thereon has been paid, as he hereby acknowledges, and he has agreed upon receiving the sum so due to him to execute such release as hereinafter appearing :

State of mortgage debt and agreement for release.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Borrower to the Mortgagee (*the receipt, &c.*), the Mortgagee, As Mortgagee, hereby releases unto the Borrower, his heirs and assigns,

Release of copyholds.

ALL AND SINGULAR the copyhold hereditaments covenanted to be surrendered by the Principal Indenture,

TO THE INTENT that the same may be discharged from the covenant and the charge thereon and the trust thereof created by the Principal Indenture, and from all money secured by and from all claims under the Principal Indenture (*h*).

IN WITNESS, &c.

(*g*) In this case a simple release by deed is sufficient, as there is no entry on the rolls relating to the mortgage.

Release of mortgage of copyholds where no surrender.

(*h*) There is no need for any *habendum* ; no estate passed. In the case of a partial release the mortgagee should give an acknowledgment of the borrower's right to production of the mortgage and of any documents relating to the copyholds released which are not handed over.

Partial release.

## No. IV.

## RELEASE of COPYHOLDS where there has been a CONDITIONAL SURRENDER, but no ADMISSION (i).

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Mortgagee), of the one part, and C. D., of, &c. (hereinafter called the Borrower), of the other part :

Recital of Mortgage. WHEREAS these presents are supplemental, &c. (*continue as in Form No. 1, so far as it relates to copyholds*) :

Recital of conditional surrender. AND WHEREAS in pursuance of the covenant contained in the Principal Indenture the said copyhold hereditaments were on the — day of — surrendered out of court To the Use of the Mortgagee and his heirs, subject to such condition as aforesaid, but the Mortgagee has not been admitted tenant pursuant to the said surrender :

State of mortgage debt and agreement for release and for satisfaction to be entered up on the rolls. AND WHEREAS the said principal sum (*continue as in last Precedent, and add the following words:—*) and it has also been agreed that immediately after the execution of these presents satisfaction of the said conditional surrender shall be entered up on the rolls of the said manor (*k*) pursuant to a warrant for that purpose signed by the Mortgagee :

Release of mortgage of copyholds. Where surrender, but no admission. (i) In this case the surrender must be vacated on the rolls by a warrant to enter up satisfaction. The mortgagee releases the covenant in the mortgage by the deed of release and gives the implied covenant against incumbrances.

Warrant to enter up satisfaction. (k) For Form of warrant to enter up satisfaction, see Transfers of Mortgages, Prec. XI., Sect. II., p. 965, *sup.* The words “by the direction of C. D., of, &c.,” in that Precedent will be omitted.

If the security consists solely of the copyholds, then if there have been no dealings with the mortgage it will be sufficient if the mortgagee signs a receipt indorsed on the deed of covenant and signs a warrant to enter up satisfaction of the conditional surrender.

Form of release of copyholds where mortgagee admitted. If the mortgagee has been admitted pursuant to the conditional surrender, his admission will be recited and he will covenant to surrender to the use of the borrower at the cost of the latter (*adapt Form No. 10*), discharged from all claims, &c.

This will be followed by a surrender to the use of the borrower pursuant to the covenant by the mortgagee (*adapt Prec. XII., Sect. II., p. 966, in Transfers of Mortgages, sup., omitting the condition at the end and substituting words discharging the land from the mortgagee's claims*). The borrower can then be readmitted (*cf. and adapt Prec. XIV. of the same Section, p. 969*).

NOW THIS INDENTURE WITNESSETH, &c. (*continue as in last Precedent to the end, omitting the references to the covenant to surrender*).

IN WITNESS, &c.

No. V.

SURRENDER *on Discharge of a* MORTGAGE *of* LEASEHOLDS  
by SUB-DEMISE.

THIS INDENTURE, made the —— day of ——, BETWEEN Parties.  
C. D., of, &c. (hereinafter called the Mortgagee), of the one part,  
and A. B., of, &c. (hereinafter called the Borrower), of the  
other part, Supplemental to an Indenture of Mortgage (herein-  
after called the Principal Indenture) dated, &c., and made, &c., Description of  
whereby a messuage and premises situated at, &c., comprised in principal deed.  
an Indenture of Lease dated the —— day of ——, 18—, were  
demised by the Borrower to the Mortgagee for the residue of  
the term of ninety-nine years granted by the said Lease (except  
the last three days thereof), subject to redemption on payment  
by the Borrower to the Mortgagee of a sum of £—— and  
interest thereon as therein mentioned,

WITNESSETH that in consideration of all principal money and interest secured by the Principal Indenture having been  
paid (the receipt whereof the Mortgagee hereby acknowledges),  
the Mortgagee, As Mortgagee, hereby surrenders unto the  
Borrower Surrender of  
sub-term so as  
to merge in  
original term.

ALL THAT the messuage and premises comprised in and  
demised by the Principal Indenture,

To THE INTENT that the derivative term created by the  
Principal Indenture shall forthwith merge and be extinguished  
in the said term of ninety-nine years granted by the said Lease,  
and that all the covenants and provisions contained in the  
Principal Indenture shall be hereby discharged.

IN WITNESS, &c.

## No. VI.

REASSIGNMENT *on discharge of a MORTGAGE of LEASE-*  
*HOLDS by ASSIGNMENT.*

Parties.

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN C. D., of, &c. (hereinafter called the Mortgagee), of the one part, and A. B., of, &c. (hereinafter called the Borrower), of the other part), Supplemental, &c. (*as in last Precedent, substituting “assigned” for “demised,” and omitting “except the last three days thereof”*),

Re-assign-  
ment.

WITNESSETH that in consideration, &c. (*as in last Precedent*), the Mortgagee, As Mortgagee, hereby assigns unto the Borrower

ALL AND SINGULAR the messuage and premises comprised in and assigned by the Principal Indenture,

Habendum.

To HOLD unto the Borrower for the residue of the term granted by the said Lease, discharged from all principal money and interest secured by and from all claims and demands under the Principal Indenture.

IN WITNESS, &c.

## No. VII.

SURRENDER *by MORTGAGEES of a TERM of YEARS in*  
*SETTLED LAND, where the MORTGAGE is PAID OFF out of*  
*CAPITAL MONEY for the purposes of the S. L. ACTS.*

Parties.

THIS INDENTURE, made, &c., BETWEEN C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the 1st part, G. H., of, &c., and I. K., of, &c. (*trustees of Settlement*) (hereinafter called the Trustees), of the 2nd part, and A. B., of, &c. (*tenant for life*) (hereinafter called the Borrower), of the 3rd part:

Description of  
prior deeds.

WHEREAS these presents are supplemental to, first: An Indenture (hereinafter called the Settlement) dated &c., and made, &c., being a settlement of divers lands and hereditaments (hereinafter called the Settled Freeholds) situated at, &c.; and, secondly, an Indenture (hereinafter called the Mortgage) dated, &c., and made, &c., whereby certain hereditaments at ——, being part of the

Settled Freeholds, were assigned to the Mortgagees for the residue of a term of 1,000 years created by the Settlement, subject to redemption by the persons deriving title under the Settlement on payment to the Mortgagees of a sum of £—— and interest thereon as therein mentioned :

AND WHEREAS the Borrower is now tenant for life in possession under the Settlement of the hereditaments thereby settled :

Recital of Settlement, and that Trustees have capital money in their hands.

AND WHEREAS the Trustees are the present trustees of the Settlement for the purposes of the Settled Land Acts, 1882 to 1890, and as such trustees have in their hands capital money liable to be applied in the discharge of incumbrances affecting the settled hereditaments or any part thereof :

AND WHEREAS the said principal sum of £—— remains due to the Mortgagees upon the security of the Mortgage but all interest thereon has been paid up to the date hereof, as they hereby acknowledge :

State of mortgage debt.

AND WHEREAS the Trustees, as such trustees as aforesaid, by the direction of the Borrower, have agreed out of the said capital money to pay to the Mortgagees the principal sum of £—— secured by the Mortgage :

Agreement to pay off Mortgage out of capital money.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Trustees, as such trustees as aforesaid, by the direction of the Borrower to the Mortgagees out of the said capital money (the receipt whereof the Mortgagees hereby acknowledge), the Mortgagees, As Mortgagees, at the request of the Borrower, hereby surrender unto the Borrower

Surrender of term so as to merge in freehold.

ALL the messuages, lands, and hereditaments comprised in the Mortgage,

TO THE INTENT that the said term of 1,000 years shall forthwith merge and be extinguished in the freehold and inheritance of the premises, discharged from all principal money and interest secured by and from all claims under the Mortgage (1).

IN WITNESS, &c.

(1) See S. L. Act, 1882, s. 21 (ii.); *Re Frown* (1888), 38 Ch. D. 383; 57 L. J. Ch. 1052. For a form of reconveyance of settled freeholds, see Transfers of Mortgages, Prec. XXII., p. 977, *sup.*, which, with the recitals in the text, can be adapted to a reconveyance of the whole of the mortgaged freeholds. The tenant for life may be the grantee to uses.

## No. VIII.

RECONVEYANCE *of* FREEHOLDS *and* SURRENDER *of* LEASE-  
HOLDS *by* a BANK (*by deed* INDORSED *or* WRITTEN *at the*  
END *of* MORTGAGE) (*m*).

Parties.

THIS INDENTURE, made, &c., BETWEEN the within- [*or above*-] named Company (hereinafter called the Company) of the one part, and the within- [*or above*-] named A. B. (hereinafter called the Borrower) of the other part,

Acknowledg-  
ment that all  
moneys have  
been paid.

WITNESSETH that the Company hereby acknowledge that all money secured by the within- [*or above*-] written Indenture has been paid and satisfied, and in consideration thereof the Company, As Mortgagees, hereby convey and surrender unto the Borrower

Company con-  
veys and  
surrenders  
freeholds and  
leaseholds to  
Mortgagor.

ALL the hereditaments and property comprised in the within- [*or above*-] written Indenture,

To HOLD as to such of them as are of freehold tenure, unto and To THE USE of the Borrower in fee simple,

AND as to such of them as are leasehold, To THE INTENT that the derivative terms of years created by the said Indenture shall forthwith merge and be extinguished in the respective terms out of which they were respectively created,

AND as to all the said hereditaments and property, discharged from all money secured by and from all claims under the said Indenture.

IN WITNESS, &c.

## No. IX.

RECONVEYANCE *by* SUPPLEMENTAL DEED *of* FREEHOLDS,  
LEASEHOLDS, *and* COPYHOLDS *by* the ADMINISTRATOR *of*  
*the survivor of* DECEASED MORTGAGEES.

Parties.

THIS INDENTURE, made, &c., BETWEEN X., of, &c. (*administrator of last surviving Mortgagee*) (hereinafter called the Mortgagee), of

Stamp.

(*m*) The amount of the stamp will be determined by the *ad valorem* stamp on the mortgage. In other words, the reconveyance must carry a stamp of 6*l.* for every 2*s.* 6*d.* with which the mortgage deed is stamped.

It is assumed that the mortgage was to secure an account current.

the one part, and A. B., of, &c. (hereinafter called the Borrower), of the other part :

WHEREAS these presents are supplemental to an Indenture (hereinafter called the Principal Indenture) dated, &c., and made between the Borrower of the one part, and C. D. and E. F. of the other part, being a Mortgage of freehold, leasehold and copyhold hereditaments, situated at, &c., for securing the payment by the Borrower to the said C. D. and E. F. on a joint account of the principal sum of £—— and interest thereon and subject to redemption by the Borrower as therein mentioned :

Recitals.  
Mortgage.

AND WHEREAS the said C. D. died on the —— day of —— and the said E. F. died on the —— day of —— intestate, and Letters of Administration to his personal estate were on the —— day of —— granted out of the Principal Probate Registry to the

Deaths of the Mortgagees and intestacy of survivor.  
Letters of Administration.

Mortgagee :  
AND WHEREAS no surrender has been made of the copyhold hereditaments comprised in the Principal Indenture pursuant to the covenant for that purpose therein contained (u) :

No surrender of copyholds.

AND WHEREAS the said principal sum of £—— now remains due on the security of the Principal Indenture but all interest thereon has been paid as is hereby acknowledged, And it has been agreed that on payment of the said principal sum such reconveyance shall be executed as hereinafter contained :

State of mortgage debt.

Agreement for reconveyance.

NOW THIS INDENTURE WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Borrower to the Mortgagee (the receipt of which sum the Mortgagee hereby acknowledges), the Mortgagee, As Personal Representative of the said E. F., deceased, hereby conveys, surrenders and releases unto the Borrower.

Conveyance of freeholds and leaseholds.

ALL the freehold and leasehold lands and hereditaments conveyed and demised by and now vested in the Mortgagee, subject to redemption under the Principal Indenture.

To HOLD as to the said freehold premises unto and To THE USE of the Borrower in fee simple,

(u) If there has been a surrender or a surrender and admission, see Prec. IV., p. 994, *sup.*, and notes thereto. The customary heir or devisee of the surviving mortgagee would, if there had been no admission, have to sign a warrant of satisfaction of the conditional surrender, or if there had been an admission then the heir could resurrender before admission, but the devisee would have to be admitted and then surrender.

Warrant of satisfaction by heir or devisee of deceased mortgagee.

AND as to the said leasehold premises, To THE INTENT that the residue of the term granted by the Principal Indenture may merge and be extinguished, And that the trust declared by the Principal Indenture may cease,

AND as to all the premises, discharged from all money secured by and from all claims under the Principal Indenture.

Release of  
copyholds.

2. For the consideration aforesaid the Mortgagee, As Personal Representative of the said E. F., deceased, hereby releases unto the Borrower

ALL the copyhold hereditaments covenanted to be surrendered by the Principal Indenture, To THE INTENT that the same may be discharged from the said covenant and the charge thereon and trust thereof created by the Principal Indenture and from all money secured by and from all claims under the Principal Indenture.

IN WITNESS, &c. (o).

No. X.

WARRANT of ATTORNEY to enter up Satisfaction of JUDGMENT.

To A. B., of, &c., and C. D., of &c., Solicitors of the Supreme Court of Judicature, jointly and severally:

WHEREAS (*Here recite warrant of attorney by E. F. to G. H. to appear for E. F. in an action for debt for £— for money borrowed, at the suit of L. M., of, &c., and to confess judgment against E. F. for the sum of £—, and costs of suit*):

Recital  
that judg-  
ment was  
entered up.

AND WHEREAS, pursuant to the recited warrant of attorney, on the — day of — a judgment was duly entered up at the suit of the said L. M. against the said E. F. for the sum of £— and costs of suit:

That money  
secured by  
judgment has  
been paid.

AND WHEREAS the said sum of £— and all interest thereon, and all other money secured by the said judgment, have been duly paid to the said L. M., as he hereby admits:

Devolution of  
mortgage  
estates.

(o) Mortgage estates devolve on the personal representative of the last surviving mortgagee, as to freeholds and the equitable interest in copyholds under Conv. Act, 1881, s. 30. But where there has been an admission of the mortgagee as tenant on the court rolls, the section does not apply, see Copyhold Act, 1894, s. 88.

NOW THESE ARE TO DESIRE you, the attorneys above named, or either of you, forthwith to enter up upon record of the said Court satisfaction of the said judgment: Power to enter satisfaction.

AND FOR whatsoever you or either of you shall do in the premises, this shall be a sufficient warrant or authority.

IN WITNESS, &c.

## No. XI.

RECEIPT to be INDORSED ON OR ANNEXED TO a MORTGAGE or  
FURTHER CHARGE to a BUILDING SOCIETY on payment  
of the MONEY secured thereby (p).

THE — Building Society hereby acknowledge to have received all money intended to be secured by the within- [or above-] written deed :

(p) By the Building Societies Act, 1874, s. 42, it is provided that when all money intended to be secured by any mortgage or further charge given to a society under the Act have been fully paid or discharged, the society may indorse upon or annex to such mortgage or further charge a reconveyance of the mortgaged property to the then owner of the equity of redemption, or to such persons and to such uses as he may direct, or a receipt under the seal of the society, countersigned by the secretary or manager in the form specified in the schedule to the Act, and such receipt shall vacate the mortgage, or further charge, or debt, and vest the estate of and in the property therein comprised in the person for the time being entitled to the equity of redemption, without any reconveyance or resurrender.

Provision of Act as to indorsement on mortgage of reconveyance or receipt.

The effect of the indorsement above mentioned is to vest the legal estate in the party or parties who may have the best right to call for it: *Hosking v. Smith* (1888), 13 A. C. 582; 58 L. J. Ch. 367; *Crosbie-Hill v. Sayer*, 1908, 1 Ch. 866; 77 L. J. Ch. 466. For instance, where there is a mortgage to a building society, and after that there are successive equitable mortgages of the same property, and the society is paid off by the mortgagor, the effect of the indorsement is to vest the legal estate in the equitable mortgagee who is first in point of time, unless the society is paid off by a subsequent equitable mortgagee who had no notice of the prior incumbrance, in which case the legal estate would vest in that mortgagee; *Fourth City B. S. v. Williams* (1880), 14 Ch. D. 140; 49 L. J. Ch. 245. And if the subsequent mortgagee advances an additional sum to the mortgagor at the same time, the protection afforded by the legal estate extends to the further advance: *Hosking v. Smith, sup.*, see, also Dart, 7th ed., 846.

Operation and effect of indorsement of receipt.

A receipt in the statutory form for the amount due on a Building or Friendly Society's mortgage is exempt from stamp duty. Stamps.

IN WITNESS whereof the seal of the said Society is hereto affixed  
this — day of — by order of the Board of Directors [or  
Committee of Management] in the presence of,

A. B., Secretary [or Manager].

[*Other witnesses if any required by the  
rules of the Society.*]

NOTE.—The said money was paid by — (q).

## No. XII.

RECEIPT *to be* INDORSED ON *or* ANNEXED TO a MORTGAGE *or*  
FURTHER CHARGE *to a* FRIENDLY SOCIETY *on payment*  
*of* MONEY *secured thereby* (r).

THE Trustees of the — Society hereby acknowledge to have  
received all money intended to be secured by the within- [or  
above-] written deed.

Signed

—, *Trustees.*

Countersigned

—, *Secretary.*

NOTE.—The said money was paid by —.

(q) It is desirable to add a note showing the source of payment to avoid  
the questions raised in *Hosking v. Smith* and *Wrosbie-Hill v. Sayer, sup.*

(r) See Friendly Societies Act, 1896, s. 53. The receipt is exempt from  
stamp duty: Highmore, 2nd ed., 309.

PART V.

STATUTORY FORMS OF MORTGAGES, TRANSFERS,  
AND RECONVEYANCES (s).

No. I.

STATUTORY MORTGAGE *in Fee* (t).

THIS INDENTURE, made by way of statutory mortgage the Parties.  
— day of —, 19—, BETWEEN A. B., of, &c. (hereinafter  
called the Borrower), of the one part, and C. D., of, &c. (herein-  
after called the Mortgagee), of the other part,

WITNESSETH that in consideration of the sum of £— Conveyance.  
now paid to the Borrower by the Mortgagee, of which sum the  
Borrower hereby acknowledges the receipt, the Borrower, As  
Mortgagor and As Beneficial Owner, hereby conveys to the  
Mortgagee

---

(s) These are the Forms in the Third Schedule to the Conv. Act, 1881.  
They are only used in very simple cases.

(t) This form of statutory mortgage is given in the first part of the Third  
Schedule to the Conv. Act, 1881, and it includes by virtue of the Act, first, Effect given  
by Act to  
statutory  
mortgage.  
a covenant with the mortgagee by the person therein expressed to convey  
as mortgagor to the effect that the mortgagor will, on the stated day, pay to  
the mortgagee the stated mortgage money, with interest thereon in the  
meantime at the stated rate, and will thereafter, if and as long as the  
mortgage money or any part thereof remains unpaid, pay to the mortgagee  
interest thereon, or on the unpaid part thereof, at the stated rate, by equal  
half-yearly payments, the first thereof to be made at the end of six calendar  
months from the day stated for payment of the mortgage money; and,  
secondly, a proviso to the effect that if the mortgagor on the stated day  
pays to the mortgagee the stated mortgage money, with interest thereon in  
the meantime at the stated rate, the mortgagee at any time thereafter, at  
the request and cost of the mortgagor, shall reconvey the mortgaged  
property to the mortgagor, or as he shall direct.

The Form in the Third Schedule to the Act has the following footnote :—  
*Variations in this and subsequent forms to be made, if required, for leasehold  
land or other matter.*

ALL THAT, &c. (*parcels*),

To HOLD to and To THE USE of the Mortgagee in fee simple for securing payment on the — day of —, 19—, of the principal sum of £— as the mortgage money, with interest thereon at the rate of £— per centum per annum.

IN WITNESS, &c.

## No. II.

### STATUTORY TRANSFER *of a* STATUTORY MORTGAGE, MORTGAGOR NOT JOINING (*n*).

Parties.

THIS INDENTURE, made by way of statutory transfer of mortgage the — day of —, 19—, BETWEEN C. D., of, &c., of the one part, and E. F., of, &c., of the other part, Supplemental to an Indenture made by way of Statutory Mortgage dated the — day of —, and made between, &c., being a mortgage of lands and hereditaments, situated, &c., for securing the sum of £— and interest,

WITNESSETH that in consideration of the sum of £— now paid to the said C. D. by the said E. F., being the aggregate amount of £— mortgage money and £— interest due in respect of the said Mortgage, of which sum the said C. D. hereby

Statutory  
forms of  
transfer of  
mortgages.

(*n*) These statutory Forms of transfer are only applicable to mortgages (of freeholds or leaseholds) in the statutory form: *Re Beachey*, 1904, 1 Ch. 67; 73 L. J. Ch. 68.

The above is Form (A) in the second part of the Third Schedule to the Conv. Act, 1881, except that it supplies what is wanting in that form, viz., a short reference to the property comprised in the prior mortgage deed. With reference to a deed in the above form, it is provided by s. 27 of the Act that it shall have effect as follows:—

“(i.) There shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred, who, with his executors, administrators, and assigns, is hereinafter in this section designated the transferee, the right to demand, sue for, recover, and give receipts for the mortgage money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee.  
(ii.) All the estate and interest, subject to redemption of the mortgagee in the mortgaged land, shall vest in the transferee, subject to redemption.”

acknowledges the receipt, the said C. D., As Mortgagee, hereby conveys and transfers to the said E. F. the benefit of the said Mortgage.

Transfer by  
Transferor of  
benefit of  
Mortgage.

IN WITNESS, &c.

### No. III.

#### DEED of STATUTORY TRANSFER, a COVENANTOR JOINING (x).

THIS INDENTURE, made by way of statutory transfer of mortgage the — day of —, 19—, BETWEEN C. D., of, &c., of the 1st part, A. B., of, &c., of the 2nd part, and E. F., of, &c., of the 3rd part, Supplemental to an Indenture made by way of Statutory Mortgage dated the — day of —, and made between, &c., being a mortgage of lands and hereditaments situated at, &c., for securing £— and interest,

Parties.

WITNESSETH that in consideration of the sum of £— now paid to the said C. D. by the said E. F., being the mortgage money due in respect of the said Mortgage, no interest being now due and payable thereon, of which sum the said C. D. hereby acknowledges the receipt, the said C. D., As Mortgagee, with the concurrence of the said A. B., who joins herein as covenantor, hereby conveys and transfers to the said E. F. the benefit of the said Mortgage.

Transfer of  
benefit of  
Mortgage.

IN WITNESS, &c.

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(x) The above is Form (B) in the second part of the Third Schedule to the Conv. Act, 1881, with an addition referring to the property comprised in the mortgage in order to supply the defect of the Form in this respect. With reference to a deed in this form, it is provided by s. 27 that there shall also be deemed to be included, and there shall by virtue of the Act be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor, to the effect following, namely:—"That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed; and will thereafter, as long as the mortgage money or any part thereof remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest."

## No. IV.

STATUTORY TRANSFER *and* STATUTORY MORTGAGE *combined* (y).

Parties.

THIS INDENTURE, made by way of statutory transfer of mortgage and statutory mortgage the — day of —, 19—, BETWEEN C. D., of, &c., of the 1st part, A. B., of, &c., of the 2nd part, and E. F., of, &c., of the 3rd part, Supplemental to an Indenture made by way of Statutory Mortgage dated the — day of —, and made between, &c., being a mortgage of lands and hereditaments situated at, &c., for securing the sum of £— and interest :

WHEREAS the principal sum of £— only remains due in respect of the said Mortgage as the mortgage money, and no interest is now due and payable thereon :

AND WHEREAS the said A. B. is seised in fee simple of the land comprised in the said Mortgage, subject to that mortgage :

Transfer of  
benefit of  
Mortgage,

NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £— paid to the said C. D. by the said E. F., of which sum the said C. D. hereby acknowledges the receipt, and the said A. B. hereby acknowledges the payment and receipt as aforesaid (b), the said C. D., As Mortgagee, hereby conveys and transfers to the said E. F. the benefit of the said Mortgage :

and convey-  
ance of parcels  
to Transferee.

AND THIS INDENTURE ALSO WITNESSETH that for the same consideration the said C. D., As Mortgagee and according to his estate, and by the direction of the said A. B., hereby conveys and the said A. B., As Beneficial Owner, hereby conveys and confirms to the said E. F.

ALL, &c. :

TO HOLD to and To THE USE of the said E. F. in fee simple, for securing payment on the — day of — of (c) the sum of

---

(y) This is Form (C) in the second part of the Third Schedule to the Conv. Act, with respect to which s. 27 provides, that if the deed of transfer is made in the Form (C) it shall, by virtue of the Act, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto accordingly; but it shall not be liable to any increased stamp duty by reason only of its being designated a mortgage.

£—— as the mortgage money, with interest thereon at the rate of [*four*] per centum per annum.

IN WITNESS, &c. (z).

No. V.

DEED of STATUTORY RECONVEYANCE of MORTGAGE (a).

THIS INDENTURE, made by way of statutory reconveyance of Parties.  
mortgage the —— day of ——, 19——, BETWEEN E. F., of ——, of  
the one part, and C. D., of ——, of the other part, Supplemental  
to an Indenture made by way of statutory transfer of mortgage  
dated the —— day of ——, 1883, and made between, &c.,

WITNESSETH that in consideration of all principal money and Reconveyance.  
interest due under that Indenture having been paid, of which  
principal and interest the said E. F. hereby acknowledges the  
receipt, the said E. F., As Mortgagee, hereby conveys to the said  
C. D.

ALL the lands and hereditaments now vested in the said E. F.  
under the said Indenture,

To HOLD to and To THE USE of the said C. D. in fee simple,  
discharged from all principal money and interest secured by and  
from all claims and demands under the said Indenture.

IN WITNESS, &c. (b).

---

(z) [*Or in case of further advance, after aforesaid at (b) insert*  
“and also in consideration of the further sum of £—— now paid  
by the said E. F. to the said C. D., of which sum the said A. B.  
hereby acknowledges the receipt”; and after of at (c) insert “the  
sums of £—— and £——, making together”].

The Form in the Third Schedule to the Act has the following footnote: —  
*Variations to be made, as required, in case of the deed being made by indorsement,  
or in respect of any other thing.*

(a) This is the Form given in the third part of the Third Schedule to the  
Conv. Act, 1881, and should only be used where the mortgage is in the  
statutory form given in that schedule.

(b) The Form in the Third Schedule to the Act has the following foot-  
note:—*Variations as noted above.*

PART VI.

INSTRUMENTS RELATING TO MORTGAGES.

No. I.

APPOINTMENT *under the STATUTORY POWER of a RECEIVER of the RENT of FREEHOLD and LEASEHOLD PROPERTY comprised in a MORTGAGE.*

Recital of Mortgage.

WHEREAS by an Indenture dated, &c., and made BETWEEN A. B., of, &c., of the one part, and me, the undersigned C. D., of the other part, certain freehold and leasehold messuages, lands and hereditaments situated in the Parish of —, in the County of —, were conveyed and demised by the said A. B. to me in fee simple as to the said freeholds, and as to the said leaseholds for the residue of the term of — years subsisting therein (except the last three days thereof), by way of mortgage for securing payment of the sum of £ — on the — day of — then next, with interest thereon at the rate of £ — per cent. per annum :

That principal money is due and interest in arrear.

AND WHEREAS the principal money secured by the said Indenture remains owing, and the interest (*b*) thereon has been in arrear for more than two calendar months :

Appointment of receiver.

NOW I, the undersigned C. D., in exercise of the power for this purpose conferred on me by section twenty-four of the Conveyancing and Law of Property Act, 1881, and of all other powers (if any) me enabling, hereby appoint X. Y., of, &c., to be the receiver of the rents and income of all the freehold and leasehold property comprised in the said Mortgage, with all the powers conferred on a receiver by the said Act, and to the intent that he

---

(*b*) A receiver must pay interest in arrear accruing as well before as after his appointment : *National Bk. v. Kenney*, 1898, 1 Ir. R. 197.

shall apply all money received by him in the manner directed by sub-section (8) of section twenty-four of the said Act, and I authorise the said X. Y. to retain for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission of £— per cent. (*c*) on the gross amount of all money received by him, and I direct him to keep the buildings on the premises insured against loss or damage by fire in the — Insurance Office.

Authority to  
retain com-  
mission,

and to insure  
buildings  
against fire.

AS WITNESS my hand this — day of —, 19—.

(Signed) C. D.

## No. II.

### APPOINTMENT *of a RECEIVER CONTEMPORANEOUSLY with the MORTGAGE (d).*

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the 1st part, C. D., of, &c. (hereinafter called the Mortgagee), of the 2nd part, and E. F., of, &c. (hereinafter called the Receiver), of the 3rd part:

Parties.

WHEREAS by an Indenture bearing even date with but executed before these presents, and made, &c., the hereditaments described in the Schedule hereto have been conveyed by the Borrower unto and To the Use of the Mortgagee in fee simple by way of mortgage for securing payment to the Mortgagee of the sum of £—, with interest thereon at the rate of £— per cent. per annum:

Recital of  
Mortgage of  
even date,

AND WHEREAS it has been agreed that the Receiver shall be appointed receiver of the mortgaged hereditaments in the manner hereinafter appearing:

and of Agree-  
ment to  
appoint  
Receiver.

NOW THIS INDENTURE WITNESSETH and it is hereby declared as follows:—

1. THE Borrower, with the concurrence of the Mortgagee, hereby appoints the Receiver to be the receiver of the rents and profits of the hereditaments described in the Schedule hereto.

Borrower, with  
concurrence of  
Mortgagee,  
appoints  
Receiver.

2. SUBJECT to the provisions hereinafter contained, sub-sections (2) and (8) of section twenty-four of the Conveyancing

Power and  
duties of  
Receiver,

(*c*) This must not exceed £5 per cent, see sub-s. 6.

(*d*) See also Form No. 13, *sup.*, if the receiver is to be appointed by the mortgage deed.

and Law of Property Act, 1881, shall apply to the Receiver, and to every or any new receiver to be appointed in his place, in like manner as if the appointment hereby made had been an appointment made by the Mortgagee under section nineteen (c) of the said Act after the mortgage-money had become due.

Remuneration.

3. THE Receiver, and any future receiver, may retain for his remuneration and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission of £— per cent. on the gross amount of all money received by him [and he is hereby directed to keep the buildings on the premises insured against loss or damage by fire in the — Insurance Office].

Receiver not to act until interest in arrear.

4. PROVIDED ALWAYS, that the Receiver, or any future receiver, shall not exercise any of the powers hereby conferred on him unless and until some half-yearly payment of interest due under the recited Mortgage, or some part thereof, shall have been in arrear for thirty days.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Particulars of the hereditaments comprised in the recited Mortgage.

### No. III.

#### TRUST DEED *in aid of a* MORTGAGE *to a* BANK *of a* LIFE INTEREST *in* SETTLED LAND *and of* LIFE POLICIES (f).

Parties.

THIS INDENTURE, made the — day of —, 19—, BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the 1st part, the — Banking Company, Limited, whose registered office is at — (hereinafter called the Bank), of the 2nd part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Trustees), of the 3rd part:

Recital of Mortgage of life interest and life policies to Bank to secure a certain sum and interest.

WHEREAS by an Indenture (hereinafter called the Mortgage) bearing even date with but executed before these presents, and made between the Mortgagor of the one part, and the Bank of the other part, the hereditaments subject to the limitations of an Indenture (hereinafter called the Settlement) dated, &c., were demised to the Bank for a term of ninety-nine years if

(c) See sub-s. (1) (iii.)

(f) This deed is intended to be used where the insurance money may not be sufficient to pay the interest as well as the principal money, and the mortgagees do not desire to go into possession.

the Borrower should so long live, and certain policies on the life of the Borrower were also assigned to the Bank by way of mortgage for securing payment to the Bank of the principal sum of £—— and interest thereon as therein mentioned, and the Mortgage contained a provision enabling the Borrower to exercise his statutory powers as tenant for life without the consent of the Bank (*g*) until the happening of such event as in the Mortgage mentioned :

AND WHEREAS on the treaty for the Mortgage it was agreed that the Borrower should make such demise and conveyance as hereinafter appearing :

NOW THIS INDENTURE WITNESSETH as follows :—

1. IN pursuance of the said agreement and in consideration of the premises, the Borrower, As Beneficial Owner, hereby bargains, sells, demises and conveys unto the Trustees,

FIRST, ALL AND SINGULAR the messuages, lands and hereditaments situated or arising in the Counties of ——, or in any of them or elsewhere, which are subject to the Mortgage :

Mortgagor demises mortgaged hereditaments, and conveys present and future arrears of rents, &c. (*h*), to Trustees.

AND, SECONDLY, ALL arrears and proportions of rents, profits and income now due or hereafter to become due from the present and future tenants and occupiers of the said hereditaments, and from all other persons liable to pay the same,

TO HOLD, as to the premises first hereinbefore described, unto the Trustees during the term of one hundred years from the date hereof if the Borrower shall so long live, And as to the premises secondly hereinbefore described unto the Trustees absolutely, And as to the whole of the premises subject to the incumbrances mentioned in the Mortgage, and to the Mortgage, but Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same.

2. THE Trustees (which expression, where the context so admits, includes the survivor of them and the executors or administrators of such survivor or other the trustees or trustee for the time being hereof) shall, out of the rents, profits and income of the premises, in the first place pay all taxes, rates, assessments and outgoings for the time being payable in respect of the

Trustees to pay outgoings,

(*g*) See S. L. Act, 1882, s. 50.

(*h*) This will enable the trustees to recover any arrears of rent which may be owing at the mortgagor's death.

keep down  
interest on  
prior incum-  
brances,

pay to Bank  
money owing,  
and surplus  
rents to  
Mortgagor.

Power to  
appoint  
receiver,

and to fix his  
remuneration.

Power not to  
be exercised  
by a sole  
Trustee.

premises, and which the respective tenants and occupiers thereof or any other person shall not be liable to pay, and the expense of insuring against loss or damage by fire any buildings or other property which the Trustees shall think fit to insure, and keep down, or concur with the Bank in keeping down, the interest on any principal money and any premiums on policies and yearly sums for the time being charged upon or payable out of the premises or any part or parts thereof in priority to the money secured to the Bank by the Mortgage, and which interest, premiums and yearly sums shall not be otherwise paid, but so nevertheless as not to give the same respectively any further or other security or priority than they already respectively enjoy, And shall in the next place pay to the Bank the money due and payable to them under the Mortgage, And shall pay the surplus of the said rents, profits and income to the Borrower, or as he shall direct.

3. THE Trustees may at any time hereafter by deed appoint any person to be receiver of the rents, profits and income of the said hereditaments and premises, with all such powers and authorities as are usually given to or can be exercised by a receiver appointed by mortgagees whose power to sell has arisen, and also with all such further powers and authorities of management as the Trustees shall from time to time think fit to confer upon any such receiver, and the Trustees may at any time remove any such receiver and from time to time appoint another receiver in his place as the Trustees think proper, And the Borrower hereby agrees to ratify and confirm every such appointment and all the powers and authorities purporting to be given to or vested in any person so appointed.

4. THE Trustees may from time to time in their absolute discretion fix the amount of remuneration of any person appointed to be receiver as aforesaid, provided that such remuneration shall not exceed £5 per cent. on the gross money received by him.

5. THE foregoing power of appointing and removing a receiver shall be exercisable only when there shall be two Trustees hereof, but so that if at any time the number of Trustees hereof shall be reduced below two, the Bank or the Borrower, as the case may require, shall, at the request in writing of the other of them, forthwith under the power for this purpose hereinafter conferred

on them or him appoint a new trustee hereof so as to make up the number of the trustees hereof to two, and if the Bank or the Borrower, as the case may be, shall fail to make such appointment within one calendar month after being so requested by the other of them so to do, then, at the expiration of that time, the other of them shall have the power of making the appointment instead of the one of them who shall have made default :

PROVIDED ALWAYS, that except for the purpose of appointing or removing a receiver, nothing herein contained shall affect the right of a sole trustee to execute the trusts hereof.

6. THE Trustees shall in no case be answerable for any loss or misapplication of the said rents, profits and income, or any part thereof, by reason of any default, neglect or breach of trust by or on the part of any such receiver, nor for any other default whatsoever on the part of such receiver, but every such loss and misapplication shall be wholly borne and paid by the Borrower.

Indemnity of  
Trustees.

7. NOTWITHSTANDING the trusts hereinbefore declared, or any of them, the Trustees shall not be liable to the Borrower, nor to any other person, by reason of any failure or omission to insure against fire as aforesaid, nor be liable for any money whatsoever until the same shall have actually come into their hands.

Further  
indemnity.

8. THE Trustees may in their absolute discretion, out of any money for the time being in their hands, and held upon the trusts hereof, pay to or place to the credit of any agent or manager of the settled estates, or any part thereof, whether being the receiver appointed under the provisions hereof or any other person, whether appointed by the Trustees or not, any money which the Trustees may consider it desirable to pay for the purpose of the proper upkeep and management of the settled estates, including any sums which the Trustees may think it desirable that any such agent or other person should have in hand for the purpose of such management ; And the Trustees may accept without investigation and act upon the statement of any such manager or agent as to what sums are required for the purpose of such management and upkeep, or are proper to be kept in hand as aforesaid ; and may accept any accounts furnished by any such receiver or other person accountable to them, or by any person employed or concerned in the agency or

Trustees to  
have discretion  
as to applica-  
tion of money  
received.

management of the settled estates or any part thereof, as correct without any further inquiry or examination, or may altogether dispense with the furnishing of any such accounts; and every account purporting to be delivered by any such receiver or other person shall, without any vouching or other verification thereof, be absolutely conclusive in favour and for the protection of the Trustees.

Discretionary  
powers as to  
management.

9. WITHOUT prejudice to any of the protections or indemnities hereinbefore given to the Trustees, they may at their absolute discretion adopt either of the following methods, or partly one and partly the other (that is to say):—The Trustees may either cause the entire gross rents and profits and income of the estates to be paid or remitted to them or to their account, and in that case may either themselves thereout pay or provide for the outgoings of the settled estates, including the receiver's remuneration and the other payments hereinbefore made payable in priority to the application of the said rents and profits in the payment of the moneys for the time being due and payable to the Bank on the security of the Mortgage, or may pay to or place to the credit of the receiver or any other person or persons employed in the agency or management of the settled estates, or of any part thereof, any money to enable any such outgoings and other payments to be paid or provided for by the said receiver or other person, and also thereout pay or place to the credit of any such receiver or other person such sums as it may be deemed expedient that any such receiver or other person should have in hand as aforesaid, or the Trustees may allow any such outgoings and payments to be in the first instance paid and such sums in hand to be in the first instance retained by the receiver or other person or persons engaged in the agency or management of the said estates or any part thereof for the purposes aforesaid, and cause the balance only to be paid or remitted to the Trustees.

Money may be  
paid by  
Trustees to  
any account.

10. ANY money in the hands of or payable to the Trustees may be paid or caused to be paid by them to any account in their names at any bank, and in particular at the — Bank, being the Bank of the Mortgagees; and no money paid into the said — Bank to the account of the Trustees shall by reason only of such payment be deemed in any manner to go in or towards payment off or reduction of the amount for the time

being owing to the Bank on the security of the Mortgage, nor shall such last-mentioned amount be deemed in any manner discharged or reduced except by payments expressly made by the Trustees to the Bank for the purpose of being applied in such payment off or reduction.

11. It shall not be obligatory on the Bank to require any of the money so coming to or in the hands of the Trustees by virtue of these presents to be applied in paying off or reducing the amount for the time being owing to the Bank on the Mortgage; but it shall be absolutely in the discretion of the Bank whether and to what extent the money for the time coming to or in the hands of the Trustees hereunder shall be so applied, it being the intention of these presents that the Bank shall be entitled at any time if they think fit to require the whole or any part of the said money to be applied in or towards payment off of the amount so for the time being owing to the Bank on the Mortgage (whether for principal, interest or otherwise), or shall be entitled to permit all or any part of the said money to be paid to the Borrower, notwithstanding that any principal or other money shall remain owing to the Bank on the security of the Mortgage without thereby in any way prejudicially affecting their security under the Mortgage.

Bank need not require money received by Trustees to be applied in reduction of debt.

12. In the event of any money in the hands of the Trustees being paid by them to any account of the Borrower personally at the said — Bank, no money so paid to any such account of the Borrower shall be deemed in any nature to extinguish or reduce any indebtedness of the Borrower to the Bank or any other account, but so that this provision shall not prejudicially affect such right (if any) as the Bank would or might have in the absence of this provision of applying the credit balance on any account of the Borrower in or towards satisfaction or reduction of any sum owing by the Borrower on any other account if and so far as the Bank may at any time in their discretion think fit so to apply the same.

As to payments to account of Mortgagor.

13. Nothing herein contained shall prejudice or affect the power of the Borrower to exercise any power conferred on him by the Settled Land Acts, 1882 to 1890, or any Act amending or extending the same, or any power conferred on him by the Settlement which takes effect by way of addition to the powers conferred by those Acts in relation to the hereditaments for the

Mortgagor's power under S. L. Acts not to be affected.

time being subject to the limitations of the Settlement, all which powers shall, subject as hereinafter provided, be exercisable without any further consent or concurrence by or on the part of the Trustees, and this security shall attach to the life estate of the Mortgagor in all property, or the rents, profits and income thereof, which by virtue of any disposition, dealing or change of investment under any of such powers may from time to time be substituted for the hereditaments hereby demised, or any part thereof, in like manner as if the term of 100 years hereby granted had been comprised in and limited by the Settlement:

PROVIDED ALWAYS that the Bank may at any time, by notice in writing given to the Borrower or his solicitors, require that as from the date of such notice the consent (either general or confined to a particular transaction or class of transactions) of the Bank, which but for the provisions contained in the Mortgage would, under section fifty of the Settled Land Act, 1882, have been necessary to enable such powers to be exercised, shall henceforth become necessary; but no purchaser, lessee, mortgagee, or other person dealing with the Borrower for value in money or money's worth shall be concerned to inquire whether any such notice shall have been given or not, or whether the consent of the Bank shall have been obtained, and it shall not be necessary to express any such consent in any such disposition for value as aforesaid.

Power for  
professional  
trustees to  
charge.

14. THE Trustees may, if they think fit, instead of acting personally, employ and pay a solicitor or any other person to transact any business or do any act required to be done in connexion with the trust, including the receipt and payment of money, and any trustee being a solicitor or person engaged in any profession or business may be so employed and shall be entitled to charge and be paid for any business or act done by him in connexion with the trust, including any act which a trustee not being a solicitor or other person engaged as aforesaid could have done personally.

Appointment  
of new  
trustees.

15. THE power of appointing a new trustee or new trustees in the place of the said C. D. or of his successors in office shall be exercisable by the Bank, and the power of appointing a new trustee or new trustees in the place of the said E. F. or of his successors in office shall be exercisable by the Borrower.

16. The expressions “the Borrower” and “the Bank” hereinbefore used shall, wherever the context allows, be construed to include persons deriving title under them respectively.

Definition  
clause.

IN WITNESS, &c.

#### No. IV.

#### AGREEMENT *for the* LOAN *of a* SUM *of* MONEY *on* MORTGAGE (i).

AN AGREEMENT, made the — day of —, 19—, BETWEEN A. B., of, &c. (*intended Mortgagor*), of the one part, and C. D., of, &c. (*intended Mortgagee*), of the other part:

Parties.

WHEREBY IT IS AGREED as follows:—

1. THE said C. D. agrees to advance to the said A. B. the sum of £2,000 upon mortgage of the freehold and copyhold messuages, lands and hereditaments situated in the Parish of —, in the County of —, short particulars whereof are contained in the Schedule hereto, provided that the said A. B. shall before the — day of — next deduce a good marketable title to the premises [and provided also that the premises shall be valued by R. H., of, &c., or such other able practical surveyor as shall be appointed for that purpose by the said C. D., at the sum of £3,000 at least, clear of all outgoings, and shall be certified by such surveyor to be a good and sufficient security for the sum of £2,000 (*k*): And the said loan shall be made and the said Mortgage shall be completed on or before the — day of — next, and time shall be deemed of the essence of the contract.

Agreement  
to advance.

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(i) When a negotiation has been entered into for the loan of money on mortgage, and it is contemplated that the investigation of the title will be attended with expense, it is prudent on the part of the intended mortgagee to have an agreement in writing, as, if the title should turn out defective, or for any other reason the mortgage should not eventually be completed, there may, in the absence of an agreement, be a difficulty in recovering the expense incurred.

When nego-  
tiation for loan  
on mortgage  
there should  
be agreement.

(k) The words within brackets will be omitted where the intended mortgagee is satisfied as to the value.

As to provisions of Mortgage Deed.

2. The principal money to be secured by the said Mortgage shall be made payable at the expiration of six calendar months from the date thereof, and shall bear interest from the date thereof at the rate of £— per cent. per annum, payable half-yearly, and the said Mortgage shall contain covenants by the Mortgagor for payment of the said principal money and interest, and shall also contain such powers and provisions as the Mortgagee shall reasonably require for better securing the payment of the principal money and interest.

Costs to be borne by Mortgagor.

3. ALL costs and expenses of and incidental to this agreement, and the negotiations preparatory hereto and the Mortgage to be made in pursuance hereof (including the investigation of the title and the valuation of the premises), shall be paid by the said A. B., whether the Mortgage shall eventually be completed or not, and whether such non-completion shall arise from [the premises not being of sufficient value, or from] the title proving defective, or from any other cause whatever (not being the wilful default of the said C. D.).

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. V.

AGREEMENT *for the* LOAN *of a* SUM *of* MONEY *on* MORTGAGE, *with* PROVISIONS *for continuing the* LOAN *for a* TIME CERTAIN *and for the* APPOINTMENT *of a* RECEIVER.

Parties.

AN AGREEMENT, made, &c., BETWEEN A. B., of, &c. (*intended Mortgagor*), of the one part, and C. D., of, &c., and E. F., of, &c. (*intended Mortgagees*) of the other part:

WHEREBY IT IS AGREED as follows:—

Agreement for advance.

1. The said C. D. and E. F. agree to advance to the said A. B. the sum of £— upon mortgage of the freehold and copyhold messuages, lands and hereditaments situated in the Parish of —, in the County of —, short particulars whereof are contained in the Schedule hereto, provided that the said A. B. shall before the — day of — next deduce a good and marketable

title to the premises, and provided also that the premises shall be valued by R. H., of, &c., or some other able practical surveyor appointed for that purpose by the said C. D. and E. F., at the sum of £—— at least, clear of all outgoings, and shall be certified by such surveyor to be of good and sufficient security for the sum proposed to be lent thereon. And the said loan shall be made and the said Mortgage shall be completed on the —— day of —— next, and time shall be deemed of the essence of the contract.

2. THE principal money to be secured by the said Mortgage shall be made payable at the expiration of six calendar months from the date thereof, and shall bear interest from the date thereof at the rate of £— per cent. per annum, payable half-yearly, and to be reduced to £— per cent. per annum in case the same shall be punctually paid within thirty days after the respective half-yearly days of payment thereof; and the said Mortgage shall contain covenants by the Mortgagor for payment of the said principal money and interest, and shall also contain provisions precluding the Mortgagees from calling in the principal money before the expiration of seven years from the date of the Mortgage, in case of such punctual payment of interest as aforesaid, and also precluding the Mortgagor from compelling the Mortgagees to receive the same within the like period of seven years. The said Mortgage shall also contain such other powers and provisions as the Mortgagees shall reasonably require for securing the payment of the principal money and interest.

As to provisions of Mortgage Deed.

3. THE Mortgagees may, by a deed to be executed simultaneously with the Mortgage, appoint a receiver of the rents and profits of the premises, with such powers and duties as the Mortgagees may think fit, for the purpose of better securing the payment of interest, and with such clauses and provisions for removing the receiver, and appointing new receivers from time to time, and otherwise, as are usually inserted in deeds of the like nature, including a proviso that the receiver shall not act until interest shall have become in arrear for 30 days; And the said A. B. shall (if required) join in such receivership deed.

Mortgagees may appoint a receiver.

4. ALL costs and expenses of and incidental to this agreement, and the negotiation preparatory hereto, and the Mortgage

Costs to be borne by Mortgagor.

to be made in pursuance hereof (including the investigation of the title and the valuation of the premises), shall be paid by the said A. B., whether the Mortgage shall eventually be completed or not, and whether such non-completion shall arise from the premises not being of sufficient value, or from the title proving defective, or from any other cause whatever (not being the wilful default of the said C. D. and E. F., or either of them).

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

## NO. VI.

### AGREEMENT *by a MORTGAGEE to CONCUR in SALES, the PURCHASE-MONEY being DEPOSITED.*

**Parties.** THIS INDENTURE, &c., BETWEEN A. B., of, &c. (hereinafter called the Mortgagee), of the one part, and C. D., of, &c. (hereinafter called the Borrower), of the other part:

**Recital of Mortgage.** WHEREAS these presents are supplemental to an Indenture (hereinafter called the Principal Indenture) dated, &c., and made, &c., being a mortgage of certain lands and hereditaments situated, &c., for securing payment by the Borrower to the Mortgagee of the principal sum of £—, with interest thereon as therein mentioned:

NOW IT IS HEREBY AGREED as follows:—

**Mortgagee to concur.** 1. THE Mortgagee shall at the request and cost of the Borrower concur in sales to be made by the Borrower of the mortgaged hereditaments in Lots or otherwise at a price to be approved by the surveyor for the time being of the Mortgagee, and upon the terms that all purchase-money shall be paid to the Mortgagee to be dealt with by him as hereinafter provided.

**Money to be deposited.** 2. ALL purchase-money received by the Mortgagee from sales of the several Lots of the mortgaged premises shall, as and when received by him, be deposited in his name, at the current rate of interest allowed where fourteen days' notice of withdrawal is to be given, in the — Bank at the risk of the Borrower, but there shall be first deducted out of such purchase-

money, when received and before deposit thereof as aforesaid, such sum or sums (if any) as the Mortgagee or his solicitor may think proper to allow from time to time in respect of the costs and expenses of sale, and the sum so deducted shall be applied by the Mortgagee in payment to his own solicitors and to the solicitors of the Borrower of their respective costs of and incidental to the sales, including the costs of the surveyor of the Mortgagee, and such deduction and payment shall be allowed by the Borrower as a proper deduction and payment by the Mortgagee.

3. THE interest allowed on the deposit shall from time to time on each half-yearly day for payment of interest under the Principal Indenture be withdrawn and taken by the Mortgagee in or towards payment of the interest due under the Principal Indenture.

Interest to  
be withdrawn.

4. THE Mortgagee will, when requested, inform the Borrower from time to time of the amount standing on deposit.

Mortgagee to  
give information.

5. THE Borrower may, when the amount on deposit (irrespective of interest) is equal to or exceeds the sum of £—, at any time give to the Mortgagee notice in writing to accept payment of a sum, not less than the said sum of £—, and being a multiple of £100, out of the amount standing on deposit in or towards discharge of the principal of the mortgage debt, and the Mortgagee will, at or before the expiration of [*three*] calendar months from the date of such notice, and on receiving from the Borrower all arrears (if any) of interest due under the Principal Indenture up to the last half-yearly day for payment of interest, and also any further interest due on the sum named in such notice up to the withdrawal thereof, withdraw for his own use that sum from the amount standing on the deposit account and accept payment of the same on account of the principal of the mortgage debt.

Deposit exceeding specified amount may be paid to Mortgagee.

6. UNTIL withdrawal and acceptance from time to time can duly take effect under the last preceding clause of this agreement, the Mortgagee shall not be deemed to have received out of the net proceeds of sales any money in discharge of the principal of the mortgage debt, but interest shall continue to be paid on the mortgage debt or on so much as is not for the time being duly discharged by withdrawal and acceptance under this agreement or is not otherwise duly discharged, and such

Deposit not to be payment to Mortgagee.

mortgage debt and the interest thereon shall be a charge on the mortgaged premises for the time being remaining unsold in the same manner and to the same extent as if no money arising from the proceeds of sales were standing in the name of the Mortgagee on a deposit account as aforesaid.

7. This agreement shall be binding on the persons respectively deriving title under the Borrower and the Mortgagee.

IN WITNESS, &c.

Agreement  
to bind  
successors  
in title.

### No. VII.

CONSENT *by a MORTGAGEE to a LEASE to be made by MORTGAGOR under Section 18 of the Conveyancing Act, 1881, there being a proviso in the Mortgage Deed requiring such consent.*

Recital of  
Mortgage.

WHEREAS by an Indenture dated the — day of —, 19—, and made between A. B. (hereinafter called the Borrower) of the one part, and C. D. (hereinafter called the Mortgagee) of the other part, a messuage, known as, &c., was conveyed by the Borrower to the Mortgagee in fee simple by way of mortgage for securing payment of the sum of £—, with interest thereon: And by the said Indenture it was provided that no lease made by the Borrower or the persons deriving title under him during the continuance of the said security should take effect by virtue of the statutory powers, unless the Mortgagee or the persons deriving title under him should consent thereto in writing:

And that  
Mortgagor  
desires to  
make Lease.

AND WHEREAS the Borrower is desirous of granting a Lease of the said messuage to G. H., of, &c., for a term of twenty-one years at the yearly rent of £— and has requested the Mortgagee to give his consent thereto:

Consent by  
Mortgagee.

NOW the Mortgagee hereby consents to the proposed Lease (*l*), provided that the Lease is made in accordance in all respects with the provisions of section eighteen of the Conveyancing and Laws of Property Act, 1881.

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(*l*) This Precedent may be made applicable to several leases, particulars of which can be stated in a schedule.

Dated the — day of —, 19—.

[As WITNESS, &c.]

(Signed) C. D. (*Mortgagee*).

Witness, X. Y.

[(Signed) A. B. (*Borrower*)].

### No. VIII.

AGREEMENT (*m*) *between MORTGAGOR and TWO MORTGAGEES of different properties as to DOCUMENTS relating to both properties and which have been delivered to ONE of the MORTGAGEES. ACKNOWLEDGMENT of the right of the OTHER MORTGAGEE to production, and AGREEMENT that DOCUMENTS shall be delivered to him if his Mortgage is subsisting when the other is paid off* (*n*).

AN AGREEMENT, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the 1st part, C. D. (*one Mortgagee*), of, &c., of the 2nd part, and E. F. (*other Mortgagee*), of, &c., of the 3rd part :

Parties.

WHEREAS by an Indenture of Mortgage bearing even date with but executed before the agreement, and made between the Borrower of the one part and the said C. D. of the other part, certain hereditaments situated, &c., have been conveyed by the Borrower unto and To the Use of the said C. D. in fee simple

Recital of Mortgages.

(*m*) This will require a 6*d.* agreement stamp.

(*n*) If two different properties held under the same title are mortgaged at the same time to two different mortgagees, it is necessary to make some arrangement about the custody of the title deeds. They may either be delivered to one mortgagee, he giving to the other an acknowledgment of the right to production, as is done in the above Precedent, or they may be delivered to a firm of solicitors or bankers acting for both mortgagees or sets of mortgagees, and this is the plan adopted in the next Precedent.

If documents relate to other land retained by the mortgagor he should obtain an acknowledgment of his right to production when he hands them to a mortgagee.

What arrangement should be made as to documents when two properties held under the same title are mortgaged to different persons.

by way of mortgage for securing payment of a sum of £—— and interest (*Add similar recital of Mortgage to E. F.*):

That documents in schedule have been delivered to one of the Mortgagees.

AND WHEREAS the documents mentioned in the Schedule hereto relate to the hereditaments comprised in both the said Indentures of Mortgage and the same have been delivered to the said C. D. subject to the arrangement hereinafter appearing:

Acknowledgment by one Mortgagee of right of other to production.

NOW the said C. D. hereby acknowledges the right of the said E. F. to production of the documents mentioned in the Schedule hereto and to delivery of copies thereof:

Agreement that documents shall be delivered to other Mortgagee if his Mortgage is subsisting when the other is satisfied.

AND IT IS HEREBY AGREED that if the Mortgage first hereinbefore recited shall be paid off and satisfied while any money remains owing to the said E. F. or the persons deriving title under him on the Mortgage secondly hereinbefore recited, then and in such case the said documents shall be delivered to him or them.

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Particulars of documents retained in the custody of the said C. D.

(*The dates and parties only will be inserted.*)

## NO. IX.

MEMORANDUM *that Documents are held by SOLICITORS on behalf of Two SETS of MORTGAGEES of different PROPERTIES.*

That documents relate to two properties mortgaged to different persons, and are in possession of solicitors on behalf of both sets of Mortgagees.

MEMORANDUM: That the documents specified in the schedule hereto relate—(1) to certain lands and hereditaments situated at, &c., belonging to A. B., of, &c. (*Mortgagor*), and by him mortgaged to C. D., of, &c., and E. F., of, &c. (*Mortgagees*), by an Indenture bearing even date with these presents to secure £—— and interest, and (2) to certain other lands and hereditaments situated at, &c., belonging to the said A. B., and by him mortgaged to G. H., of, &c., and I. K., of, &c. (*other Mortgagees*), by another Indenture bearing even date herewith to secure £—— and interest, and that the same are now in the possession of the

undersigned, Messrs. — & —, as solicitors for and on behalf of the said C. D. and E. F., and also for and on behalf of the said G. H. and I. K., as such Mortgagees respectively as aforesaid.

Dated the — day of —, 19—.

THE SCHEDULE ABOVE REFERRED TO.

(Signed) — & — (*Solicitors*).

### No. X.

#### NOTICE *by* SECOND MORTGAGEE *to a* FIRST MORTGAGEE.

To C. D. (*First Mortgagee*) and all others whom it may concern.

WE HEREBY GIVE YOU NOTICE, that by an Indenture dated, &c., and made, &c. (*date and parties*), the lands and hereditaments situated in the Parish of —, in the County of —, in mortgage to you from the said A. B. (*Mortgagor*), have been conveyed by him to the said E. F. (*Second Mortgagee*) by way of mortgage to secure £— and interest.

Dated the — day of —, 19—.

(Signed) —

Solicitors for the above-named E. F.

### No. XI.

#### NOTICE *by* MORTGAGEE *of* ASSIGNMENT *of a* POLICY *of* ASSURANCE *to the* OFFICE (*o*).

To the — Assurance Company.

I HEREBY GIVE YOU NOTICE, that by an Indenture dated, &c., and made, &c. (*date and parties*), a policy of assurance effected with you by the said A. B. on his life for the sum of £— dated the — day of —, 19—, and numbered —, was assigned by the said A. B. to the said C. D. by way of

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(*o*) See the Policies of Assurance Act, 1867 (30 & 31 Vict. c. 144), s. 3. In practice the companies recommend that the acknowledgment should be required on a duplicate copy of the notice to be furnished by the assignee. A small fee is usually payable for the acknowledgment. This form may be used where the assignment is absolute, omitting the words "by way of mortgage."

mortgage : And I request you to deliver to me a written acknowledgment of the receipt of this Notice (p).

Dated the — day of —, 19—.

(Signed) —,

Solicitor for the said C. D.

## No. XII.

### NOTICE *by* MORTGAGEES *of* ASSIGNMENT *of* REVERSIONARY INTEREST *in* settled PERSONAL ESTATE *to* TRUSTEES *of* *Fund* (q).

To L. M. and N. O., the Trustees of an Indenture dated the — day of —, 18—, being a Settlement made on the marriage of — [or, the Trustees of the Will of —, deceased], and all others whom it may concern.

WE HEREBY GIVE YOU NOTICE, that by an Indenture dated, &c., and made, &c. (*date and parties*), the reversionary share of the said A. B. (*Mortgagor*) in the [husband's or wife's] trust fund comprised in the said Indenture of Settlement [or, in the trust money and funds representing the residuary estate of the said —, or in, &c. (*following the language of the Mortgage Deed*)] was assigned by him to the said C. D. (*Mortgagee*), by way of mortgage for securing payment of £— and interest [or, was charged with the payment to the said C. D. of the money therein mentioned, or, &c. (*according to the terms of the deed*)].

Dated the — day of —, 19—.

(Signed) —,

Solicitors for the above-named C. D.

## No. XIII.

### NOTICE *by* MORTGAGEE *to* TENANT *not to pay rent to* MORTGAGOR.

HEREBY GIVE YOU NOTICE, that by an Indenture dated the — day of —, and made between A. B., of, &c., of the one part, and me of the other part, the messuage and land situated at —, and now in your possession, were conveyed to me by the said A. B. by way of mortgage for securing the principal

(p) A fee not exceeding 5s. will be payable for the acknowledgment : s. 6.

(q) This form may be used where the assignment is absolute, omitting the words "by way of mortgage, &c."

sum of £—— and interest thereon, and that under the said Indenture the said principal sum remains owing, together with an arrear of interest thereon, and I therefore require you to pay to me the rent now and hereafter to accrue due in respect of the premises, and on no account after the date hereof to pay any rent in respect of the premises to the said A. B. or to any person or persons other than myself or the persons deriving title under me or my agent.

AS WITNESS my hand the —— day of ——, 19—.

To C. D. (*Tenant*).

A. B. (*Mortgagor*).

#### No. XIV.

NOTICE *by* MORTGAGOR *of intention to* PAY OFF *at the expiration of* SIX MONTHS *(r)*.

I HEREBY GIVE YOU NOTICE, that at the expiration of six calendar months from the date hereof I intend to pay the principal money and interest due and owing to you from me, on the security of an Indenture dated the —— day of ——, and made between me of the one part, and you of the other part.

AS WITNESS my hand this —— day of ——, 19—,

To C. D. (*Mortgagor*).

A. B. (*Mortgagor*).

#### No. XV.

NOTICE *by* MORTGAGEE *to* MORTGAGOR *requiring* PAYMENT, *with a view to exercise* POWER OF SALE *in case of* DEFAULT *(s)*.

To C. D. (*Mortgagor*) and all others whom this Notice may concern.

I HEREBY REQUIRE YOU to pay to me forthwith the principal sum of £—— secured by a certain Indenture dated the —— day of ——, and made between you of the one part, and me of the other part, and all interest *(t)* due thereon: And I hereby give

(r) If the mortgagor makes default in payment at the expiration of the notice, interest must be paid or a new notice given: *Bartlett v. Franklin* (1867), 36 L. J. Ch. 671; and see *Johnson v. Evans* (1890), 61 L. T. 18.

(s) The notice cannot be validly served till after the mortgage money has become due: *Schwyn v. Garjit* (1888), 38 Ch. D. 273; 57 L. J. Ch. 609; and see *Barker v. Illingworth*, 1908, 2 Ch. 20; 77 L. J. Ch. 581.

(t) The interest is only payable up to date of payment if the mortgagor pays off pursuant to the notice: *Bocill v. Endle*, 1896, 1 Ch. 648; 65 L. J. Ch. 542.

you notice that if the same is not paid within three calendar months after the service hereof I shall proceed to sell the mortgaged property (*u*).

AS WITNESS my hand this — day of —, 19—.

A. B. (*Mortgagee*).

#### No. XVI.

NOTICE (*x*) *by* MORTGAGEE *of intention to exercise* POWER *of* SALE, *to be left on the property, it not being known where the MORTGAGOR is, or whether he is living* (*y*).

To C. D. (*Mortgagor*), if living, or his legal personal representatives, and all other persons whom this Notice may concern.

I HEREBY REQUIRE the payment to me of the principal sum of £—, secured by an Indenture dated, &c., and made, &c. (*state date and parties*), and all interest due thereon : And I give notice that if the same is not paid to me within three calendar months after the service of this Notice I shall proceed to sell the mortgaged hereditaments.

AS WITNESS my hand this — day of —, 19—.

A. B. (*Mortgagee*).

#### No. XVII.

NOTICE *by an* URBAN DISTRICT COUNCIL *requiring* PAYMENT *of a* SUM *of* MONEY *charged on premises for* PRIVATE STREET WORKS *with a view to exercise* STATUTORY POWER *of* SALE *in case of* DEFAULT.

In the matter of the Private Street Works Act, 1892.

To A. B., of, &c., the owner of the premises known as — (*describe the property shortly*), and to all other persons interested therein (*z*).

(*u*) The notice cannot be withdrawn without the consent of the mortgagor : *Saathly v. Wilde*, 1899, 2 Ch. 747 ; 68 L. J. Ch. 681.

(*x*) See first note to last Precedent.

(*y*) See Conv. Act, 1881, s. 67.

(*z*) This notice should be served on the "owner," as defined by the

WHEREAS certain private street works have been executed by the Urban District Council of — in a certain street known as —, in the Parish of —, in the County of —, pursuant to and in accordance with the provisions of the Private Street Works Act, 1892:

Recitals of  
proceedings  
under Act.

AND WHEREAS by the final apportionment of the expenses of the said works made by the surveyor to the said Council and dated the — day of —, 19—, the sum of £— was charged on the above-mentioned premises as the share of expenses payable in respect thereof:

AND WHEREAS a notice in writing of the said final apportionment was served on the owners of the premises affected thereby as required by the said Act, and in particular such notice was served on you, the above-named A. B., on the — day of —, 19—:

AND WHEREAS no objection was made to the said final apportionment by the owner of any premises charged with any expenses thereunder:

AND WHEREAS the whole of the said sum of £— charged on the above-mentioned premises as aforesaid still remains owing with interest thereon at the rate of £4 per cent. per annum from the date of the said final apportionment:

That money  
charged  
remains  
owing.

NOW the said Urban District Council of — hereby REQUIRE payment of the said sum of £— and all interest due or to become due thereon, and GIVE NOTICE that if the same be not paid within three calendar months after the service hereof the said Council will proceed to sell the premises under the statutory power for that purpose.

Notice that  
payment is  
required, and  
that in default  
of payment  
within three  
months  
premises will  
be sold.

Given, &c.

(Common seal of Council.)

P. II. Act, 1875, and on all other persons known or believed to have an interest—*e.g.*, where the owner is a leaseholder, on the persons entitled to the freehold, and the notice should also be affixed to the premises. Mortgagees in possession are “owners”: *Maguire v. Leigh-on-Sea U. D. C.* (1906), 95 L. T. 319. The “owner,” when the work is completed, is liable: *East Ham U. D. C. v. Aylett*, 1905, 2 K. B. 22; 74 L. J. K. B. 471; and see *Millard v. Balby, &c. Council*, 1905, 1 K. B. 60; 74 L. J. K. B. 45. Expenses cannot be recovered unless a copy of the resolution of the local authority approving the provisional apportionment has been served upon the owner: *Wirral Rural Council v. Carter*, 1903, 1 K. B. 646; 72 L. J. K. B. 332.

## C.—DISSERTATION ON DISPOSITIONS OF PERSONAL CHATTELS.

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### SECT. I.—*The modes of transfer of personal chattels.*

Modes of  
transfer of  
personal  
chattels.

THE property in personal chattels may be transferred by actual delivery, by a contract for sale, or by deed or writing not being a contract for sale.

Parol gift  
void.

A *gift* of chattels must be by delivery or deed. A parol gift without delivery is void (*a*).

Delivery:  
what is  
sufficient.

Where actual delivery of the articles which are the subject of the gift is impossible or inconvenient, a delivery of some symbol of possession will be sufficient, as, where the goods are in a warehouse, a delivery of the key (*b*). The marking of the goods by the purchaser has been also held to be a delivery and taking possession (*c*). If goods are in the custody of a third person, an agreement between the owner and a purchaser or mortgagee that the goods shall belong to the latter, either absolutely or by way of security, if notified to the custodian, and assented to by him, is equivalent to delivery (*d*).

Contract for  
sale may be in  
writing or by  
parol.

By the Sale of Goods Act, 1893, a contract for the sale of goods (which term includes all personal chattels other than money and choses in action (*e*)) may be made in writing (either

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(*a*) *Cochrane v. Moore* (1890), 25 Q. B. D. 57; 59 L. J. Q. B. 377.

(*b*) *Ryall v. Rowles* (1749), 1 Ves. Sen. 348, 366.

(*c*) *Ellis v. Hunt* (1789), 3 T. R. 464.

(*d*) *Hilton v. Tucker* (1888), 39 Ch. D. 669; 57 L. J. Ch. 973; and see *Charlesworth v. Mills*, 1892, A. C. 231; 61 L. J. Q. B. 830; *Rawlinson v. Mort* (1905), 93 L. T. 555.

(*e*) S. 62 (1).

with or without seal), or by word of mouth (*f*). But a contract for the sale of any goods of the value of £10 or upwards is not enforceable by action, unless the buyer accepts part of the goods so sold, and actually receives them, or gives something in earnest to bind the contract or in part payment, or unless some note or memorandum in writing of the contract is made and signed by the party to be charged or his agent in that behalf (*g*).

Contract for sale of goods of value of £10 not enforceable unless certain conditions are observed.

Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred, and one of the rules for ascertaining the intention is, that where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in them passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery or both be postponed (*h*).

When property in goods the subject of a contract passes to buyer.

The law with respect to sales, pledges, or other dispositions of goods by a person who is not the owner is set forth in the following enactments:—

Sale by person not the owner.

# Sale of Goods Act, 1893, s. 21 :

Subject to the provisions of the Act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell. Provided that nothing in this Act shall affect the provisions of the Factors Acts or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof, or the validity of any contract of sale under any special common law or statutory power of sale, or under the order of a Court of competent jurisdiction (*i*).

Purchaser acquires no better title than vendor except in certain cases.

S. 22.—Where goods are sold in market overt according to the usage of the market, the buyer acquires a good title to the goods, provided that he buys them in good faith and without notice of any defect or want of title on the part of the seller.

Sale in market overt.

S. 23.—Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires

Where seller has voidable title.

(*f*) S. 3.

(*g*) S. 4; and see *Prestel, &c. Co. v. Garner* (1910), 54 Sol. J. 750.

(*h*) Ss. 17, 18.

(*i*) See *Farquharson v. King*, 1902, A. C. 325; 71 L. J. K. B. 667.

a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

**Factors Act, 1889, s. 2 :**

Powers of mercantile agent with respect to disposition of goods.

Where a mercantile agent (*k*) is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorized by the owner of the goods to make the same : provided that the person taking under the disposition acts in good faith, and has not, at the time of the disposition, notice that the person making the disposition has not authority to make the same.

**Sale of Goods Act, 1893, s. 25 (l) :**

Disposition by seller remaining in possession.

Where a person, having sold goods, continues, or is, in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

Disposition by buyer obtaining possession.

Where a person having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

Whether possession under a hire-purchase agreement is within this enactment.

If a person who has been put into possession of an article under a hire-purchase agreement sells or pledges it before all the instalments are paid, the question whether he is to be

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(*k*) For definition of "mercantile agent," see s. 1; see also *Oppenheimer v. Attenborough*, 1 K. B. 510; 76 L. J. K. B. 177; *Oppenheimer v. Fraser*, 1907, 2 K. B. 50; 76 L. J. K. B. 806; *Weiner v. Harris*, 1910, 1 K. B. 285; 79 L. J. K. B. 342.

(*l*) This section is a re-enactment of ss. 8 and 9 of the Factors Act, 1889.

deemed a person who has agreed to purchase the article, so as to bring the case within this enactment, depends on the terms of the agreement (*ll*). If by the agreement he is bound to go on paying any rent or instalment until it amounts to the purchase-money, the section applies (*m*). If by the agreement he is at liberty to terminate the hiring at any time before the purchase-money has been paid, the section does not apply (*n*).

An assignment of chattels by deed or writing is unusual, except where the grantor retains the possession. In that case the assignment, whether the transaction be a sale or not, is usually called a bill of sale. A bill of sale may be by way of absolute transfer or by way of mortgage to secure payment of money.

Assignment by deed or writing, usually called a bill of sale.

An agreement, letter, or memorandum, for or relating to the sale of goods, wares, or merchandise, is exempted from stamp duty (*o*), but an absolute bill of sale is chargeable with stamp duty as a conveyance on sale (*p*), and cannot be registered until stamped (*q*).

No stamp duty on sale.

Fixtures, *i.e.*, chattels affixed to the land or to a building, are, when so affixed, part of the land, and pass by an assurance of the land itself without being expressly mentioned, and this is so whether the assurance be absolute or by way of mortgage, legal or equitable (including a deposit of deeds), and whether the person making the assurance, or the depositor, be absolute owner of the land and fixtures, or a lessee of the land who has put up the fixtures and has a right to remove them as against his landlord (*r*). But a lessee or tenant having put up fixtures

Fixtures.

(*ll*) *Brooks v. Beirstein*, 1909, 1 K. B. 98, 101; 78 L. J. K. B. 243.

(*m*) *Lee v. Butler*, 1893, 2 Q. B. 318; 62 L. J. Q. B. 591; *Wylde v. Legge* (1901), 84 L. T. 121.

(*n*) *Helby v. Matthews*, 1895, A. C. 471; 64 L. J. Q. B. 465.

(*o*) Stamp Act, 1891, Schedule, "Agreement."

(*p*) See *Alpe*, 11th ed., p. 104.

(*q*) Stamp Act, 1891, s. 41. *Higmore*, 2nd ed., 110. As regards the stamps on marketable securities and contract notes, see *Fin.* (1909-10) Act, 1910, ss. 76-79.

(*r*) *Mear v. Jacobs* (1875), L. R. 7 H. L. 481; 44 L. J. Ch. 481; *Reynolds v. Ashby*, 1904, A. C. 466; 73 L. J. K. B. 946; see also *Conv. Act*, 1881, s. 6, under which fixtures pass by a conveyance of land unless a contrary intention is shown.

which he has a right to remove, may assign them by deed or writing separately from his interest in the land. Such an assignment operates as a transfer of the right of severance and a licence to the assignee to enter upon the land for the purpose of exercising such right (s).

SECT. II.—*The provisions of the Act 13 Eliz. c. 5, and the Bankruptcy Acts affecting dispositions of personal chattels.*

13 Eliz. c. 5.

The Act 13 Eliz. c. 5 renders void all gifts and alienations of goods and chattels, made with intent to hinder or defraud creditors. Under this Act it was held in *Twyne's Case* (t) that an assignment by a debtor of his goods to one of his creditors was fraudulent and void against another creditor on the ground (among others) that the grantor was permitted to retain possession. But in this and subsequent cases the continuance in possession was treated as a mark only, and not as conclusive evidence of fraud; and where such possession was consistent with the terms of the deed and the nature of the transaction, as in the case of a mortgage, the suspicion of fraud was rebutted, and the transaction could not be impeached under the Act of Elizabeth (u).

Registered bills of sale or deeds of arrangement, when void under 13 Eliz. c. 5.

A registered bill of sale is of course not invalidated under 13 Eliz. c. 5 merely by the grantor remaining in possession (x); nor is a registered deed of arrangement merely because it reserves a benefit to the debtor (y).

Actual fraud invalidates bills of sale.

Actual fraud will invalidate an alienation, whether by registered bill of sale or otherwise; and a voluntary bill of sale

(s) *Thompson v. Pettit* (1847), 16 L. J. Q. B. 162; *Horsfall v. Hey* (1848), 2 Exch. 778; 17 L. J. Ex. 266.

(t) (1601), 3 Co. Rep. 80; 1 Smith's L. C., 11th ed., 1.

(u) *Edwards v. Harben* (1788), 2 T. R. 587; *Martindale v. Booth* (1832), 3 B. & Ad. 498; 1 L. J. K. B. 166; *Waver v. Joule* (1857), 3 C. B. (N. S.) 309; *Madama v. Swiney* (1858), 8 Ir. C. L. R. 73, see also *Wooderman v. Baldock* (1819), 8 Taunt. 676; and see Goodeve, *Pers. Property*, 4th ed., 95.

(x) *Alton v. Harrison* (1869), L. R. 4 Ch. 622; 38 L. J. Ch. 669.

(y) *Maskelyne v. Smith*, 1903, 1 K. B. 671; 72 L. J. K. B. 237.

of chattels, whether registered or not, like any other voluntary conveyance of real or personal property, is, under the Act of Elizabeth, fraudulent and void against creditors, if the donor is at the time of making it in insolvent circumstances (z).

and voluntary bills of sale void if donor insolvent.

*Bankruptcy Acts (a).*

Under the Bankr. Act, 1883, s. 4, a debtor commits an act of bankruptcy in (amongst other) the following cases: (A) If in England or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally: (B) If in England or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part of it: (C) If in England or elsewhere he makes any conveyance or transfer of his property, or any part thereof, which would under that or any other Act be void as a fraudulent preference if he were adjudged bankrupt. In any of these cases the disposition constituting the act of bankruptcy is void, if a petition for bankruptcy is presented within three months, and the debtor is adjudged a bankrupt thereon (b).

What is an act of bankruptcy.

In order to bring a case within (A) there must be a conveyance or assignment by which the whole, or substantially the whole, of the debtor's property is vested in a trustee or trustees for the benefit of his creditors generally. Even a conveyance of all property except leaseholds, with a declaration of trust as to leaseholds, is an assignment within the Act (c), but a mere agreement by the owner that his property shall be dealt with for the benefit of his creditors is not sufficient (d).

Conveyance of all a trader's property for the benefit of creditors generally.

As regards (B), it has been long settled that a conveyance by a debtor of all his effects, or of all his effects with a colourable or trifling exception, to one of his creditors to secure an

Conveyance of all a trader's effects to secure an antecedent debt an act of bankruptcy.

(z) See Vol II., "Settlements."

(a) Generally as to Bankruptcy, see Wace on Bankruptcy.

(b) Ss. 6 (1) (c), 43.

(c) *Re Hughes*, 1893, 1 Q. B. 595; 62 L. J. Q. B. 358.

(d) *Re Spackman* (1890), 24 Q. B. D. 728; 59 L. J. Q. B. 306.

antecedent debt, is fraudulent within the meaning of the bankruptcy law, and an act of bankruptcy, and the law is the same whether the debtor be a trader or not (*e*).

Sale to purchaser in good faith of whole stock not an act of bankruptcy, nor a mortgage to secure a present advance.

But an absolute sale to a purchaser in good faith of the whole of a debtor's stock in trade is not an act of bankruptcy (*f*). So, also, a mortgage of the whole of a debtor's stock in trade to secure a present advance is a valid transaction, and it makes no difference that the deed enables the mortgagee to seize after-acquired property, or that the advance bears a small proportion to the value of the goods assigned (*g*). It has been held, moreover, that a mortgage which on the face of it appears to be made to secure an existing debt may be supported by evidence that it was made in pursuance of a parol agreement entered into at the time of the loan (*h*). But it must be made clear to the Court that the agreement was in good faith, and that it was not in fact an agreement that the security should be postponed until the grantor was on the eve of bankruptcy, or in order to protect his credit (*i*).

What is a substantial exception, so as to prevent operation of doctrine.

When a portion of the debtor's effects is excluded from the assignment, the question has to be decided whether the part so excluded is or is not a substantial part, so as to prevent the operation of the above doctrine, and this must depend on the particular circumstances of each case (*k*).

Value of book debts to be calculated.

In estimating whether an assignment comprises the whole of a trader's property the value of his book debts is to be taken into account (*l*).

Where mortgage is partly for old debt

Where a trader assigns all his effects to a creditor in consideration partly of an existing debt and partly of a new advance,

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(*e*) *Smith v. Cannon* (1853), 2 El. & Bl. 35; 22 L. J. Q. B. 291; *Ex p. Foxley* (1868), L. R. 3 Ch. 515; *Re Wood* (1872), L. R. 7 Ch. 302; 41 L. J. Bk. 21.  
(*f*) *Baxter v. Pritchard* (1834), 1 A. & E. 456; 3 L. J. K. B. 185.  
(*g*) *Ex p. Dann* (1881), 17 Ch. D. 26; 51 L. J. Ch. 290.  
(*h*) *Harris v. Rickett* (1859), 4 H. & N. 1; 28 L. J. Ex. 197.  
(*i*) *Re Jackson and Bassford*, 1906, 2 Ch. 467; 75 L. J. Ch. 697.  
(*k*) *Ex p. Hawker* (1872), L. R. 7 Ch. 214; 41 L. J. Bk. 34.  
(*l*) *Ex p. Burton* (1879), 13 Ch. D. 102.

the validity of the transaction depends on whether the object of the transaction is, by means of the new advance, to enable or assist the trader to continue his trade, or whether the new advance is colourable only, the real intention being to give a security for the past debt (*m*). and partly for new advance.

An assignment of all the debtor's property to secure a past debt and a future advance is good, if there is a contemporaneous agreement to make such advance to a sufficient amount, and such an advance is in fact made. The agreement need not be technically binding at law or in equity; a promise in good faith is sufficient. In the absence of such an agreement the bill of sale would be void (*n*). The mere existence of an antecedent debt is not valuable consideration for a security given by the debtor (*o*). Where assignment of all to secure past debt and future advances is good.

A forbearance to enforce an existing security is not a good consideration for supporting a subsequent assignment of the debtor's whole property to secure the pre-existing debt (*p*). Forbearance is not good consideration.

The fact that an assignment of the whole of a debtor's property is made under pressure does not prevent it from being an act of bankruptcy (*q*). Assignment under pressure.

As regards (*c*) the Act also provides (*r*) that every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money, in favour of any creditor or any person in trust for any creditor, with a view of giving such Fraudulent preference.

(*m*) *Ex p. Johnson* (1884), 26 Ch. D. 338; 53 L. J. Ch. 762; *Re Ross*, 1894, A. C. 135; 63 L. J. P. C. 70.

(*n*) *Ex p. Wilkinson* (1883), 22 Ch. D. 788; 52 L. J. Ch. 657.

(*o*) *Wigan v. English, &c. Assurance Association*, 1909, 1 Ch. 291; 78 L. J. Ch. 120.

(*p*) *Ex p. Payne* (1879), 11 Ch. D. 539.

(*q*) *Newton v. Chantler* (1806), 7 East, 138; *Jones v. Harber* (1870), L. R. 6 Q. B. 77; 40 L. J. Q. B. 59.

(*r*) S. 48; see notes on the section in Wace, 244 *et seq.* As to fraudulent preference by companies, see, *Re Jackson and Bassford*, 1906, 2 Ch. 467; 75 L. J. Ch. 697; *Re Columbian, &c. Co.*, 1910, 2 Ch. 120; 79 L. J. Ch. 583.

creditor a preference over the other creditors, shall, if the person making, taking, paying or suffering the same, is adjudged bankrupt on a bankruptcy petition presented within *three* months after the date of making, taking, paying or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy; but this section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

Whether a fraudulent preference depends on object with which made.

In determining what is a fraudulent preference, the Court will in each case consider whether the payment or transaction sought to be set aside was or was not made with a view to give one creditor a preference over the others, and this is a question of fact to be determined by the Court or jury, according to the particular circumstances of each case. If the payment, &c., has been spontaneous on the part of the debtor, there would be a strong inference on the affirmative side; but if there had been pressure on the creditor's part, it would still be a question whether the payment was made under the force of such pressure (s). If it appeared from all the circumstances that the dominant view of the debtor was to give the preference, though this might not be the only motive, the payment would be an act of bankruptcy (t).

*As to goods in reputed ownership of bankrupt.*

Order and disposition clause in Bankr. Act, 1883.

The Act of 1883 includes, as part of the property divisible among the creditors of the bankrupt, "all goods being, at the commencement of the bankruptcy in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof" (u).

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(s) See *Sharp v. Jackson*, 1899, A. C. 419; 68 L. J. Q. B. 866; Wace, pp. 245 *et seq.*

(t) *Ex p. Hill* (1883), 23 Ch. D. 695; 52 L. J. Ch. 903; *Ex p. Taylor* (1886), 18 Q. B. D. 295; 56 L. J. Q. B. 195; *Re Washington, &c. Co.*, 1893, 3 Ch. 95; 62 L. J. Ch. 895; *Re Lake*, 1901, 1 Q. B. 710; 70 L. J. K. B. 390.

(u) S. 44 (2) (iii.); *Re Watson*, 1904, 2 K. B. 753; 73 L. J. K. B. 854; Wace, p. 44.

The order and disposition clause does not apply to chattels which have acquired the character of fixtures, whether the premises to which they are attached be freehold or leasehold, and whether as between landlord and tenant the fixtures are the absolute property of the landlord, or are removable by the tenant, and whether they are disposed of by the same instrument with the land, or separately (*v*) ; nor does it apply to goods in the bankrupt's possession otherwise than in his trade or business, *e.g.*, the furniture in his private residence.

Does not apply to fixtures.

Furniture in private residence.

If a tradesman in the ordinary course of his business has in his possession the goods of customers, such possession does not constitute him reputed owner, and the goods will not pass to the trustee on his bankruptcy. Thus, books deposited by the owner with a bookseller, and kept by him as a part of his general stock, and sold on commission (*x*), or books left with a publisher for sale in the usual course of trade (*y*), or furniture hired by an hotel keeper (*z*), or carriages kept on the premises of a coachmaker for the true owner (*u*), do not, on the bankruptcy of the bookseller, publisher, hotel keeper, or coachmaker, pass to his trustee.

Does not apply to goods in possession of tradesman in the usual course of trade.

There are also other instances in which custom will take the case out of the rule of reputed ownership. Thus, where farming produce was purchased, and the price was paid before the bankruptcy, but it appeared to be the custom of farmers to leave such produce upon the farm of the seller until it suited the convenience of the buyer to take it away, it was held that this custom exempted such produce from passing to the assignees under the

Farming produce left on farm after sale.

(*v*) *Ex p. Barclay* (1852), 5 D. M. & G. 403; 25 L. J. Bk. 1; *Whitmore v. Empson* (1856), 23 Beav. 313; 26 L. J. Ch. 364; *Mather v. Fraser* (1856), 2 K. & J. 536; 25 L. J. Ch. 361; *Walmesley v. Milne* (1859), 29 L. J. C. P. 97; *Tebb v. Hodge* (1869), L. R. 5 C. P. 73; 39 L. J. C. P. 56.

(*x*) *Whitfield v. Brand* (1847), 16 M. & W. 282; 16 L. J. Ex. 103.

(*y*) *Ex p. Greenwood* (1862), 6 L. T. 558; see, also, *Ex p. Wingfield* (1879), 10 Ch. D. 591.

(*z*) *Ex p. Turquand* (1885), 14 Q. B. D. 636; 54 L. J. Q. B. 242.

(*u*) *Bartram v. Payne* (1827), 3 Car. & P. 175.

law of reputed ownership (*b*) ; and a similar decision was given in a case where butts of whisky were, in accordance with the custom of the trade, allowed to remain in the vendor's bonded warehouse after a sale (*c*).

Goods in possession of bankrupt on a contract of hiring.

Where a trader sells chattels and continues in possession on a contract of hiring, and then becomes bankrupt, the goods will pass to the trustee in bankruptcy, unless the change of ownership has been made notorious (*d*), or unless the sale has been carried into effect by a bill of sale registered under the Bills of Sale Act, 1878 (*e*), or unless it is a well-known custom in the trade for goods of that description to be held on hire. And where there is no relation of vendor and purchaser, but the owner of chattels lets them to a trader who becomes bankrupt, the right of the owner as against the trustee in bankruptcy will still depend on whether such taking on hire is in accordance with notorious usage (*f*).

Married women.

A married woman carrying on trade apart from her husband is subject to the bankruptcy laws (*g*). She does not carry on trade separately from her husband if she acts in partnership with him (*h*), but does if the business belongs to her and he only acts as manager (*i*).

Ante-nuptial settlement of personal chattels supported against husband's bankruptcy.

A deed made before marriage, whereby furniture or other chattels belonging either to the wife or the husband are assigned to the wife or a trustee for the wife, is good against the trustee in bankruptcy of the husband, although at the date of the bankruptcy the goods are in the house in which they both reside (*k*), and the deed need not be registered, being excluded

(*b*) *Ex p. Viller* (1862), 11 W. R. 113 ; 7 L. T. 370.

(*c*) *Ex p. Watkins* (1873), L. R. 8 Ch. 520 ; 42 L. J. Bk. 50.

(*d*) *Ex p. Brooks* (1883), 23 Ch. D. 261.

(*e*) S. 20 ; Act of 1882, s. 15 ; *Swift v. Pannell* (1883), 24 Ch. D. 210 ; 53 L. J. Ch. 341.

(*f*) *Re Matthews* (1876), 1 Ch. D. 501 ; 45 L. J. Bk. 100.

(*g*) M. W. P. Act, 1882, s. 1 (5) ; Wolst. Conv. Acts, 9th ed., 289 ; Wace, 226.

(*h*) *Re Helsby* (1894), 1 Manson, 12 ; 63 L. J. Q. B. 261.

(*i*) *Re Simon*, 1909, 1 K. B. 201 ; 78 L. J. K. B. 392.

(*k*) *Simmons v. Edwards* (1847), 16 M. & W. 838 ; and see *Re Magnus*, 1910, 2 K. B. 1049.

from the operation of the Bills of Sale Act, 1878 (*l*). A similar deed made after marriage for valuable consideration is good, if registered; but not otherwise (*m*).

In order to confer on the trustee in bankruptcy a right to sell the goods under the order and disposition clause, they must be in the bankrupt's possession as reputed owner at the time of the bankruptcy, with the *consent* of the true owner. In this respect there is an important difference between the "apparent possession" mentioned in the Bills of Sale Act, 1878, and "order and disposition" under the Bankr. Act. If, therefore, the real owner has withdrawn his consent and taken steps to take possession, even though he may not have succeeded owing to the refusal of the debtor to give them up or otherwise, the title of the trustee will be excluded (*n*). So also if the debtor has obtained possession of goods fraudulently, the right of the defrauded person to get them back is not defeated by the former's bankruptcy, unless the latter has known of the fraud for some time before the bankruptcy and delayed unreasonably to assert his right (*o*).

In order to come within the order and disposition clause the goods must be in bankrupt's possession with consent of true owner.

Property held by the bankrupt in trust for any other person is expressly exempted from the Bankr. Act, 1883 (*p*). The exemption is not restricted to a trustee in the ordinary meaning of the word (*q*).

Property held by bankrupt in trust excepted from Bankruptcy Act.

Whenever possession is obtained, or demanded, between the act of bankruptcy of the debtor and the date of the receiving order, without notice on the part of the owner of such act of

Order and disposition clause does not apply where possession is obtained or

(*l*) S. 4; and see *Re Reis*, 1904, 2 K. B. 769; 73 L. J. K. B. 929.

(*m*) *Ashton v. Blackshaw* (1870), L. R. 9 Eq. 510; 39 L. J. Ch. 205; *Ex p. Cox* (1876), 1 Ch. D. 302.

(*n*) *Smith v. Topping* (1833), 5 B. & Ad. 674; 3 L. J. K. B. 47; *Ex p. Harris* (1872), L. R. 8 Ch. 48; 42 L. J. Bk. 9; *Re Eslick* (1876), 4 Ch. D. 496; 46 L. J. Bk. 30; *Taylor v. Eckersley* (1877), 5 Ch. D. 710.

(*o*) *Load v. Green* (1846), 15 M. & W. 216; 15 L. J. Ex. 113.

(*p*) S. 44 (1); and see *Re Hamilton, Young & Co.*, 1905, 2 K. B. 772; 74 L. J. K. B. 905.

(*q*) See Wace, 167.

demand  
without notice  
between act of  
bankruptcy  
and receiving  
order.

bankruptcy, the order and disposition clause of the Bankr. Act will not apply, as such possession or demand would be a dealing with the bankrupt within the meaning and protection of the 49th section; even though the owner may have been informed before taking possession that an act of bankruptcy is in contemplation (*r*).

### *Voluntary Settlements.*

Provision as  
to voluntary  
settlements  
made by  
settlor.

It has been already stated that under the Act 13 Eliz. a voluntary disposition of property is void against creditors under certain circumstances. It is further provided by the Bankr. Act, 1883, s. 47, that any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser(s) or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property, which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of such settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within *ten* years after the date of such settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property (*t*) comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof. And the term "settlement" includes any conveyance or transfer of property.

(*r*) *Re Wright* (1876), 3 Ch. D. 70; 45 L. J. Bk. 130.

(*s*) The word "purchaser" in this section means a buyer in the ordinary commercial sense, and not a purchaser in the strict legal sense: *Ex p. Hillman* (1879), 10 Ch. D. 622; 48 L. J. Bk. 77, see, also *Re Parry*, 1904, 1 K. B. 129; 73 L. J. K. B. 83. The release of a right or the compromise of a claim may be sufficient to constitute a person a "purchaser" within the meaning of the section: *Re Pope*, 1908, 2 K. B. 169; 77 L. J. K. B. 767.

(*t*) As to how far the goodwill of a business may be taken into account, see *Re Butterworth* (1882), 19 Ch. D. 588; 51 L. J. Ch. 521.

SECT. III.—*The Provisions of the Bills of Sale Acts.*

The Bills of Sale Acts now in force are the Acts of 1878, 1882, 1890, and 1891. The Act of 1882 contains provisions having for their object not only the protection of the creditors of the grantor from fraudulent dispositions by him, but also the protection of the grantor himself from the oppressive action of money-lenders (*u*).

Bills of Sale Acts.

The Act of 1878 applies to every bill of sale (whether absolute or subject or not subject to any trust), whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale (*x*). The Act of 1882 applies only to bills of sale given by way of security for the payment of money.

To what Bills of sale Acts apply.

The Acts of 1890 and 1891 exempt letters of hypothecation of imported goods from the provisions of the previous Acts.

Imported goods.

*What is a Bill of Sale.*

The Act of 1878, ss. 4—7, defines what is a bill of sale within the meaning of the Acts (*y*).

In order to be a bill of sale for the purposes of the Acts, the document must confer the right to take possession. If the person to whom the document is given is already in possession of the goods, or if he has acquired the right to such possession independently of it, it is not a bill of sale. Thus, if goods are deposited with a lender, and at the same time a document is signed recording the transaction and regulating the rights of the pledgee, the document is not a bill of sale (*z*). And this is so

Document not conferring right to take possession not a bill of sale.

Document accompanying pledge.

(*u*) See Reed on the Bills of Sale Acts, 12th ed., 196 *et seq.*; also the Money Lenders Act, 1900.

(*x*) S. 3.

(*y*) See also Reed, 12th ed., 44 *et seq.*

(*z*) *Ex p. Hubbard* (1886), 17 Q. B. D. 690; 55 L. J. Q. B. 490; *Newlove v. Shrewsbury* (1888), 21 Q. B. D. 41; 57 L. J. Q. B. 176; *Morris v. Delobel-Flipo*, 1892, 2 Ch. 352; 61 L. J. Ch. 518.

where the delivery of the goods to the lender is constructive only, *e.g.*, where the custody is in a third party, who assents to an arrangement that they shall henceforth be held on behalf of the lender (*a*). But if the lender takes possession of goods in pursuance of a written document authorising him to do so, such a document is a bill of sale, and the title of the lender depends on its validity (*b*).

In determining whether a document is a bill of sale within the meaning of the Act of 1882, the Court looks at all the facts, and not only at the document itself. Thus, if a transaction taking the form of a sale of chattels by A to B., and a purchase-hiring agreement by B. to A., is in fact intended as a security for a loan, and the relation between the parties was throughout that of borrower and lender, the Court will treat the agreement as a bill of sale by way of security for money and as void under the Act. The test in such a case is whether there was any interval between the so called sale and the signing of the hiring agreement during which B. was the absolute owner of the chattels free from any trust in favour of A. (*c*).

So, also, neither an inventory of goods with a receipt attached, nor a receipt without an inventory, nor an inventory and valuation, is a bill of sale for the purpose of the Acts unless it operates as an assurance of the goods, *i.e.*, if, independently of it, there is a complete contract sufficient to pass the property in them (*d*).

With regard to trade machinery, if an owner of land on which there is fixed trade machinery mortgages the land without any general words or any reference to fixtures or machinery, the mortgage is not a bill of sale of personal chattels, unless the deed expressly mentions the fixtures and authorises the mortgagee to

(*a*) *Charlesworth v. Mills*, 1892, A. C. 231; 61 L. J. Q. B. 830.

(*b*) *Ex p. Parsons* (1886), 16 Q. B. D. 532; 55 L. J. Q. B. 137.

(*c*) *Moss v. Pepper*, 1905, A. C. 102; 74 L. J. K. B. 452; and see *G. E. Ry. Co. v. Lord*, 1909, A. C. 109; 78 L. J. K. B. 160.

(*d*) *Marsden v. Meadows* (1881), 7 Q. B. D. 80; 50 L. J. Q. B. 536; *Ramsay v. Margrett*, 1894, 2 Q. B. 18; 63 L. J. Q. B. 513; *Clapham v. Ives*, (1904), 91 L. T. 69.

Purchase-hiring agreement.

Inventory or receipt.

Construction of Act as regards mortgage of land on which there is fixed trade machinery.

sell them separately, or an intention that he may do so is to be gathered from the language of the deed (*e*).

The exception of a "marriage settlement" in s. 4 includes not only an ante-nuptial settlement, but an instrument executed after marriage in pursuance of a marriage settlement (*f*). Meaning of "marriage settlement."

Debentures of incorporated companies are excepted from the operation of the Act of 1882 by s. 17, nor are they bills of sale within the meaning of the Act of 1878, but when the charge is created the debentures or trust deed must be registered under s. 93 of the Companies (Consolidation) Act, 1908, with the Registrar of Joint Stock Companies. Debentures excepted from Act.

### *Essentials of a valid Bill of Sale.*

Every bill of sale not given by way of security for money must observe the following conditions, namely :—(1) Its execution must be attested by a solicitor of the Supreme Court, and the attestation must state that before its execution the effect thereof was explained to the grantor by the attesting solicitor (*g*); (2) It must be registered within seven clear days from the making or giving thereof (*h*); and (3) It must set forth the consideration for which it was given (*h*). If the above conditions have not been observed, the bill of sale is void as against the trustee in bankruptcy of the grantor, against all trustees under any assignment for the benefit of creditors, and against execution creditors, so far as regards the property in or right to the possession of any Bills of sale not by way of security for money must be (1) attested by solicitor; (2) registered within seven days; and (3) state consideration; or otherwise are void against trustee in bankruptcy, &c.

(*e*) *Johus v. Ware*, 1899, 1 Ch. 359; 68 L. J. Ch. 155; and see note to Form No. 23A of Forms in Mortgages, p. 788, *sup*.

(*f*) *Re Reis*, 1904, 2 K. B. 769; 73 L. J. K. B. 929.

(*g*) Act of 1878, s. 10. Notwithstanding the repeal in s. 10 of the Act of 1882, these provisions still apply where a bill of sale is given otherwise than to secure the payment of money: *Reed*, 12th ed., 196; *Casson v. Churchley* (1884), 53 L. J. Q. B. 335. If the attestation clause states that the effect of the bill of sale has been explained by the solicitor, this is sufficient, although he may not in fact have done so: *Ex p. Nat. Merc. Bk.* (1880), 15 Ch. D. 42; 49 L. J. Bk. 62. Nor need the affidavit state that such explanation was given: *Ex p. Bolland* (1882), 21 Ch. D. 543; 52 L. J. Ch. 113.

(*h*) S. 8.

chattels comprised in such bill of sale, which at or after the filing of the bankruptcy petition, or the execution of the assignment, or the execution of process, and after the expiration of such seven days (*i*), are in the possession or apparent possession of the grantor (*k*). Personal chattels will be deemed to be in the apparent possession of the grantor so long as they remain or are in or upon any premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession may have been taken by or given to any other person (*l*).

What is  
apparent pos-  
session.

Bill of sale by  
way of security  
for money void  
against every  
one, unless  
(1) attested;  
(2) registered  
within seven  
days; (3) con-  
sideration  
truly stated;  
(4) made in  
accordance  
with form in  
schedule;  
and (5) con-  
sideration £30  
at least.

Every bill of sale given by way of security for money must observe the following conditions, namely:—(1) It must be attested by at least one credible witness, not being a party thereto, but need not be attested by a solicitor (*m*); (2) It must be registered within seven clear days after its execution, or if it is executed in any place out of England, then within seven clear days after the time at which it would in the ordinary course of post arrive in England, if posted immediately after the execution thereof (*n*); (3) It must truly set forth the consideration (*n*); (4) It must be made in accordance with the form in the schedule to the Act of 1882 (*o*); (5) It must be made or given in consideration of a sum not less than £30 (*p*). If the above conditions are not observed, the bill of sale is absolutely void, even against the grantor.

Bill of sale to  
have schedule  
of property  
attached  
thereto.

Every bill of sale by way of security for money must have annexed thereto or written thereon a schedule containing an

(*i*) If the sheriff takes goods in execution before the expiration of the seven days, the grantee may set up the bill of sale, though unregistered, see, *Marples v. Hartley* (1861), 3 E. & E. 610; 30 L. J. Q. B. 92.

(*k*) Act of 1878, s. 8.

(*l*) S. 4. As to the meaning of "apparent possession," see *Hopkins v. Gudgeon*, 1906, 1 K. B. 690; 75 L. J. K. B. 452, and cases there cited.

(*m*) Act of 1882, s. 10.

(*n*) S. 8.

(*o*) S. 9.

(*p*) S. 12. *Davis v. Usher* (1884), 12 Q. B. D. 490; 53 L. J. Q. B. 422. *Barlow v. Blund*, 1897, 1 Q. B. 125; 66 L. J. Q. B. 157.

inventory of the personal chattels comprised in the bill of sale ; and every such bill of sale is void except as against the grantor (1) in respect of any personal chattels not specifically described in the schedule ; and (2) in respect of any personal chattels specifically described in the schedule, of which the grantor was not the true owner at the time of the execution thereof. But Exceptions, this does not apply to any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed, nor to any fixtures separately assigned or charged, or any plant or trade machinery where such fixtures, &c., are used on, or attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, &c., specifically described in the schedule to the bill of sale (*q*).

A bill of sale executed within, or on the expiration of, seven days after the execution of a prior unregistered bill of sale of the same property and for the same debt, is void, unless the Court is satisfied that it was executed *bona fide* for the purpose of correcting a material error in the first bill, and not for the purpose of evading the Act (*r*).

Avoidance of certain duplicate bills of sale.

S. 10 of the Act of 1878 prescribes the mode of registering bills of sale, and also provides that if the bill of sale is made or given subject to any defeasance or condition (*s*) or declaration of trust (in favour of the grantor) (*t*) not contained in the body thereof, such defeasance, &c., must be registered with it.

Mode of registration.

S. 10 also directs that if two or more bills of sale are given, comprising in whole or in part any of the same chattels, they have priority in the order of the date of their registration respectively as regards such chattels. The conjoint effect of the

Priority of bills of sale.

(*q*) Ss. 4, 5, 6 of Act of 1882.

(*r*) Act of 1878, s. 9.

(*s*) *Carpenter v. Dean* (1889), 23 Q. B. D. 566 ; *Edwards v. Marcus*, 1891, 1 Q. B. 587 ; 63 L. J. Q. B. 363.

(*t*) *Robinson v. Collingwood* (1865), 34 L. J. C. P. 18 ; *Thomas v. Charles*, 1891, 2 Q. B. 408 ; 60 L. J. Q. B. 722.

above provision as to priority, and s. 5 of the Act of 1882, is, that if a person gives two successive bills of sale by way of absolute assignment, or two successive bills of sale by way of security for money, and the first is not registered but the second is, the second has priority; but if he first gives a bill of sale by way of absolute assignment which is not registered and secondly, a bill of sale by way of security for money, which is registered, the second is void against the grantee under the first, because at the time of granting it the grantor was not the true owner (*u*).

A transfer or assignment of a registered bill of sale need not be registered (*x*).

Renewal of  
registration.

The registration of a bill of sale must be renewed every five years, but renewal does not become necessary by reason only of a transfer or assignment of a bill of sale (*y*). The omission to renew may be rectified by a Judge of the High Court by extending the time (*z*); but in a case where in the meantime the grantor had become bankrupt, the Court refused to extend the time so as to defeat the vested interests of the trustee in bankruptcy (*a*).

#### *Other provisions of the Acts.*

Order and dis-  
position clause  
in Bankr. Act  
applies to  
chattels com-  
prised in a bill  
of sale by way  
of security,  
but not to  
absolute  
transfer.

Chattels comprised in a bill of sale given by way of security for money, and duly registered under the Act, are liable, notwithstanding the registration, to be seized and sold in the event of the grantor becoming bankrupt while the chattels remain in his possession, order, or disposition, in his trade or business, under such circumstances that he is the reputed owner thereof (*b*).

(*u*) *Tuck v. Southern Counties Deposit Bk.* (1890), 42 Ch. D. 471; 58 L. J. Ch. 699, see, *Thomas v. Scarles*, 1891, 2 Q. B. 408; 60 L. J. Q. B. 722.

(*x*) Act of 1878, s. 10. See *Horne v. Hughes* (1881), 6 Q. B. D. 676; *Ex p. Turquand* (1885), 14 Q. B. D. 636; 54 L. J. Q. B. 242.

(*y*) S. 11; see *Antoniadi v. Smith*, 1901, 2 K. B. 589; 70 L. J. K. B. 869.

(*z*) S. 11.

(*a*) *Re Parsons*, 1893, 2 Q. B. 422; 62 L. J. Q. B. 365. See *per* Buckley, J., as to the usual form of order, *Re Joplin, ac. Co.*, 1902, 1 Ch. 79, 80; 71 L. J. Ch. 21.

(*b*) Bankr. Act, 1883, s. 44; Bills of Sale Act, 1882, s. 15, repealing s. 20 of Act of 1878.

Chattels comprised in a duly registered bill of sale, given by way of absolute transfer, are not in the order and disposition of the bankrupt within the meaning of the Bankr. Act, 1883 (*c*).

Personal chattels assigned by a bill of sale as security for payment of money cannot be seized or taken possession of by the grantee for any other than the following causes: (1) If the grantor makes default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security; (2) If the grantor becomes a bankrupt or suffers the goods or any of them to be distrained for rent, rates, or taxes; (3) If the grantor fraudulently either removes or suffers the said goods or any of them to be removed from the premises; (4) If the grantor does not without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes; (5) If execution has been levied against the goods of the grantor under any judgment at law. The grantor may, however, within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the High Court, or to a Judge of the High Court in Chambers, and such Court or Judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just (*d*).

Chattels in bill of sale liable to seizure in certain events only.

All personal chattels seized, or of which possession is taken under or by virtue of any bill of sale by way of security, must be allowed to remain on the premises where they were so seized or so taken possession of, and cannot be removed or sold until after the expiration of five clear days from the day they were so

Chattels not to be removed or sold for five days after seizure.

(*c*) *Swift v. Pannell* (1883), 24 Ch. D. 210; 53 L. J. Ch. 341. This was decided with reference to the Bankr. Act, 1869, but it is apprehended that the rule will be the same under the Act of 1883.

(*d*) Act of 1882, s. 7.

seized or so taken possession of (*e*). It has been held that although after the expiration of the five days the grantee's right to the goods is absolute at law, the grantor may redeem at any time before removal and sale by payment of principal, interest, and costs (*f*).

Bill of sale  
not to protect  
chattels  
against distress  
for rates and  
taxes.

A bill of sale given as security for money is no protection in respect of personal chattels included therein which, but for such bill of sale, would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates (*g*).

Inspection of  
registered bills  
of sale.

Any person may at reasonable times search the register, on payment of a fee, and make extracts of certain particulars (*h*).

Execution by  
attorney.

A bill of sale may be executed by attorney, and the grantee is not necessarily excluded from being the attorney (*i*).

### *The form of a Bill of Sale by way of mortgage.*

Of the conditions required by the Act of 1882 the principal points to be attended to in the preparation of a bill of sale by way of mortgage are (1) that the consideration is properly set forth, and (2) that the instrument is in accordance with the form in the schedule to the Act of 1882.

What is a  
sufficient  
setting forth  
of the con-  
sideration.

With respect to the consideration, it has been decided (1) that money in fact owing from the mortgagor to the mortgagee may be properly stated as a sum of money then advanced and paid (*k*); but money then advanced is improperly stated to be money now owing, and the omission of an acknowledgment of receipt is fatal (*l*); (2) that if the money expressed to be paid, or a part of it, is in fact, by the direction of the mortgagor, or as a condition

(*e*) Act of 1882, s. 13.

(*f*) *Johnson v. Diprose*, 1893, 1 Q. B. 512; 62 L. J. Q. B. 291.

(*g*) S. 14.

(*h*) S. 16.

(*i*) *Furnivall v. Hudson*, 1893, 1 Ch. 335; 62 L. J. Ch. 178.

(*k*) *Credit Co. v. Pott* (1880), 6 Q. B. D. 295; 50 L. J. Q. B. 106; *Thomas v. Scarles*, 1891, 2 Q. B. 408; 60 L. J. Q. B. 722.

(*l*) *Davies v. Jenkins*, 1900, 1 Q. B. 133; 69 L. J. Q. B. 187.

of the advance, applied in payment of the mortgagor's debts or in discharge of the mortgagor's liability to a third party not being a debt already due, the consideration is not untruly stated (*m*); but (3) that if part of the money is *retained* by the mortgagee for interest or a bonus (*n*), or to pay some debt not yet due (*o*), or even to pay the expense of preparing the mortgage deed, that expense not being in fact a debt due at the time, but one which does not arise until after the mortgage is complete (*p*), the bill of sale is void.

A bill of sale by way of mortgage must be made in accordance with the form given in the schedule to the Act of 1882. As to the meaning of the words "in accordance with," it has been laid down that "Every bill of sale must be substantially like the form in the schedule. Nothing substantial must be subtracted from it, and nothing actually inconsistent must be added to it" (*q*); and in a later case, that if but for s. 9 the instrument as drawn would by virtue either of addition or omission have any legal effect which goes beyond or falls short of that which would result from the statutory form, then it is void. In order to be valid the bill of sale must produce not the like effect, but the same effect, *i.e.*, the legal effect, the whole legal effect, and nothing but the legal effect, as that of the statutory form (*r*).

Bill of sale by way of mortgage must be made in accordance with statutory form.

In accordance with the above rules of interpretation the following points have been decided, viz.:—

Points decided with respect to accordance with form.

(*m*) *Re Wiltshire*, 1900, 1 Q. B. 96; 69 L. J. Q. B. 145.

(*n*) *Ex p. Charing Cross Bk.* (1880), 16 Ch. D. 35; 50 L. J. Ch. 157.

(*o*) *Ex p. Rolph* (1881), 19 Ch. D. 98; 51 L. J. Ch. 88; *Richardson v. Harris* (1889), 22 Q. B. D. 268; *Darlow v. Bland*, 1897, 1 Q. B. 125; 66 L. J. Q. B. 157.

(*p*) *Ex p. Firth* (1882), 19 Ch. D. 419; 51 L. J. Ch. 473. In *Re Cann* (1884), 13 Q. B. D. 36, the solicitor acting for both parties retained part of the advance for his costs of the transaction, the bill of sale being given "in consideration of the sum of [*total advance*]." It was held that the consideration was truly stated.

(*q*) *Davis v. Burton* (1883), 11 Q. B. D. 537, 540; 52 L. J. Q. B. 636.

(*r*) *Ex p. Stanford* (1886), 17 Q. B. D. 259, 271; 55 L. J. Q. B. 341; *Rosefield v. Proc. Union Bank*, 1910, 2 K. B. 781.

Principal and interest.

1. The bill of sale must state a fixed principal sum and rateable interest, and nothing can be added to these. The interest must not be capitalized, or a bonus made payable(s), nor is it sufficient to fix a lump sum as payable for interest without mentioning the rate(*t*).

As to mode and time of payment of money.

But the principal money and interest may be made payable on a certain day, with a covenant, if it is not paid on that day, to pay interest thereon half-yearly until payment(*u*). So, also, the money may be made payable by instalments, and in that case a provision may be inserted to the effect that, if default is made in payment of one instalment, the whole amount then remaining unpaid shall become payable at once(*x*). And where there is no such provision, default in payment of one instalment entitles the grantor to seize the goods(*y*). Again, the principal money and interest may be made payable by weekly payments of a specified amount without distinguishing how much is principal and how much interest, provided that the rate of interest is stated(*z*).

2. The money must not be made payable on demand(*a*), but it may be made payable "on or before" a certain day(*b*).

What covenants and provisions may be inserted for maintenance of security.

3. Covenants to insure and pay the necessary premiums, and to deliver to the mortgagee the last receipt if required(*c*) ; to replace and repair articles which may be destroyed, injured, or deteriorated(*d*) ; not to remove chattels without the mortgagee's consent ; to pay rent, rates and taxes, and to produce on demand,

(*s*) *Paris v. Burton*, *sup.* ; *Re Williams* (1883), 25 Ch. D. 656 ; 53 L. J. Ch. 500.

(*t*) *Blankenstein v. Robertson* (1890), 24 Q. B. D. 543 ; 59 L. J. Q. B. 315 ; and see *Atlin v. Finch* (1904), 91 L. T. 70.

(*u*) *Watkins v. Evans* (1886), 18 Q. B. D. 386 ; 56 L. J. Q. B. 200 ; *Ex p. Rawlings* (1887), 18 Q. B. D. 489 ; 56 L. J. Q. B. 197.

(*x*) *Lumley v. Simmons* (1887), 34 Ch. D. 698 ; 56 L. J. Ch. 329.

(*y*) *Re Wood*, 1894, 1 Q. B. 605 ; 63 L. J. Q. B. 352.

(*z*) *Re Bagen*, 1894, 1 Q. B. 444 ; 63 L. J. Q. B. 209.

(*a*) *Hetherington v. Groome* (1884), 13 Q. B. D. 789 ; 53 L. J. Q. B. 576 ; *Sibley v. Higgs* (1885), 15 Q. B. D. 619 ; 54 L. J. Q. B. 525.

(*b*) *De Braam v. Ford*, 1900, 1 Ch. 142 ; 69 L. J. Ch. 82.

(*c*) *Hammond v. Hocking* (1884), 12 Q. B. D. 291 ; 53 L. J. Q. B. 205.

(*d*) *Coates v. Moore*, 1903, 2 K. B. 140 ; 72 L. J. K. B. 539.

or without demand, the last receipts for such rent, rates and taxes (*c*), may be inserted as being covenants agreed to by the parties for maintaining the security. And this is so, although the terms of the covenant may be such that a breach thereof would be a cause of seizure under s. 7, assuming that the deed contains the proviso prescribed at the end of the statutory form, and no clause inconsistent with that proviso (*f*). Provisions enabling a mortgagee to add to the security and retain out of the sale money any sums expended by him in insurance, or in payment of rent, rates or taxes, by reason of the mortgagor's neglect to do so (*g*); or the expenses incurred by him in or about the sale, or in seizing or taking possession of the chattels, or in defending or maintaining the security (*h*), are valid. So, also, is a provision enabling the mortgagee to break open doors and windows for the purpose of seizing and taking possession (*i*).

4. A provision enabling a mortgagee to retain out of the sale money any expenses incurred by him "in relation to this security" is too wide, and invalidates the deed (*k*), and also a provision enabling a mortgagee who was an auctioneer to retain a commission out of the sale money (*l*), and a provision exempting a purchaser from being bound or concerned to see whether default has been made (*m*), have been held to be fatal deviations from the statutory form.

Provisions which have been held to be not necessary for maintenance of security.

5. A bill of sale given to a surety by way of security for money which he may be called upon to pay under a guarantee given by

Bill of sale by way of indemnity void.

(*c*) *Weardale Coal Co. v. Hodson*, 1894, 1 Q. B. 598; 63 L. J. Q. B. 391; *Carterwright v. Regan*, 1895, 1 Q. B. 900; 64 L. J. Q. B. 507; *Harrison v. Shallis* (1909), 25 T. L. R. 664.

(*f*) See cases in last note, also *Topley v. Corsbie* (1888), 20 Q. B. D. 350; 57 L. J. Q. B. 271; *Ex p. Ward*, 1899, 2 Q. B. 517; 68 L. J. Q. B. 953.

(*g*) *Goldstrom v. Tallerman* (1887), 18 Q. B. D. 1; 56 L. J. Q. B. 22.

(*h*) *Lunley v. Simmons*, *sup.*

(*i*) *Re Morrill* (1887), 18 Q. B. D. 222; 56 L. J. Q. B. 139.

(*k*) *Calvert v. Thomas* (1887), 19 Q. B. D. 204; 56 L. J. Q. B. 273.

(*l*) *Furber v. Cobb* (1887), 18 Q. B. D. 494; 56 L. J. Q. B. 273.

(*m*) *Blaibery v. Beckett* (1886), 18 Q. B. D. 96; 56 L. J. Q. B. 35.

him is void, as not being in accordance with the statutory form (*n*).

The words  
"as beneficial  
owner" in-  
validate the  
deed.

6. The introduction of the words "as beneficial owner" invalidates the deed on the ground that, since the Conveyancing Act, 1881, they imply (*inter alia*) a covenant that in case of default the grantee may "enter into and upon or receive and thenceforth quietly hold, occupy, enjoy or take, and receive" the chattels assigned (*o*), and therefore confer on him by implication a right to remove and sell at once without waiting for the five days prescribed by the Act.

Chattels must  
be described  
in schedule.

7. The chattels must be described in the schedule, and not in the body of the deed (*p*).

Must not  
include interest  
in land.

8. A bill of sale is void if the schedule includes the mortgagor's interest in the farm where the chattels are (*q*).

Several  
grantors.

9. A bill of sale given by two or more grantors, each of whom is a sole owner of part of the goods, is void (*r*).

Void, if  
collateral  
security on  
other terms.

10. A bill of sale in the statutory form is void under s. 10 of the Act of 1878 if accompanied by a collateral security for one and the same debt, so that the bill of sale is liable to be redeemed upon different terms to those mentioned in the bill of sale (*s*).

Description  
necessary.

11. A bill of sale is void, unless both the address and the description of the attesting witness appear in the attestation clause, and the defect is not cured by the affidavit containing these particulars. A description must be given, although the witness has no occupation (*t*).

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(*n*) *Hughes v. Little* (1886), 18 Q. B. D. 32; 56 L. J. Q. B. 96.

(*o*) S. 7 (c); *Ex p. Stanford* (1886), 17 Q. B. D. 259; 55 L. J. Q. B. 341.

(*p*) *Thomas v. Kelly* (1888), 13 A. C. 506; 58 L. J. Q. B. 66.

(*q*) *Cochrane v. Entwistle* (1890), 25 Q. B. D. 116; 59 L. J. Q. B. 418, see, *Swanley Coal Co. v. Denton*, 1906, 2 K. B. 873; 75 L. J. K. B. 1009, where the title deeds of the premises were included in the schedule, and it was held these were pledged merely as documents.

(*r*) *Saunders v. White*, 1902, 1 K. B. 472; 71 L. J. K. B. 318.

(*s*) *Edwards v. Marcus*, 1894, 1 Q. B. 587; 63 L. J. Q. B. 363.

(*t*) *Sims v. Trollope*, 1897, 1 Q. B. 24; 66 L. J. Q. B. 11; *Altree v. A.*,

A bill of sale not in accordance with the form is void altogether, so that no action could be brought upon the covenant to pay (*u*); but, of course, if there is an actual loan, the principal money might be recovered in a common action for money lent, with interest at the legal rate. And if personal chattels and other property are mortgaged by a deed not in accordance with the statutory form, it is good as to the other property comprised in it (*x*).

Bill of sale not in accordance with form altogether void.

### *After-acquired Chattels.*

Previously to the Act of 1882, it was a common practice to include in a bill of sale not only particular chattels in the grantor's possession at the time, but also chattels to be subsequently acquired in substitution for or in addition to them.

Bill of sale of after-acquired chattels prior to Act of 1882.

The only benefit which *at law* could be conferred on the donee under a bill of sale as to after-acquired effects was a power or licence to seize them whenever they came into possession, and the title of the donee was acquired by his actually obtaining possession under the licence: but such a power was revocable by the donor, and had no effect *at law* as against persons claiming under any subsequent assignment from him, which might be executed before the donee had obtained actual possession of them (*y*).

Effect of licence to seize after-acquired goods at common law.

In equity, however, a deed made for valuable consideration, and purporting to assign chattels to be afterwards acquired, and so described as to be capable of being identified, operated as a

A bill of sale of after-acquired chattels, if specific,

1898, 2 Q. B. 267; 67 L. J. Q. B. 882; and see *Simmons v. Woodward*, 1892, A. C. 100; 61 L. J. Ch. 252; and see note to Prec. XIV., *inf.*

(*u*) *Davies v. Rees* (1886), 17 Q. B. D. 408; 55 L. J. Q. B. 363; *Pettit v. Lodge*, 1908, 1 K. B. 744; 77 L. J. K. B. 413; *Smith v. Whiteman*, 1909, 2 K. B. 437; 78 L. J. K. B. 1073.

(*x*) *Re Burdett* (1888), 20 Q. B. D. 310; 57 L. J. Q. B. 263; *Re Isaacson*, 1895, 1 Q. B. 333; 64 L. J. Q. B. 191.

(*y*) *Carr v. Acraman* (1856), 11 Exch. 566; 25 L. J. Ex. 90; *Congreve v. Evetts* (1854), 10 Exch. 298; 23 L. J. Ex. 273; *Thompson v. Cohen* (1872), L. R. 7 Q. B. 527; 41 L. J. Q. B. 221.

operated in equity as a contract, and passed the property, when acquired, to the grantee.

A second bill of sale made for valuable consideration without notice, after the goods have been acquired, would have priority.  
*See* *Simble*.

Act of 1882 prohibits in effect a mortgage of after-acquired chattels.

contract which fastened on the goods directly they came into the grantor's possession, and of which specific performance would be enforced. The instrument therefore in equity passed the property in the goods, when acquired, to the grantee (*z*).

But as the assignment was good in equity only, it followed that if the grantor made a second bill of sale after the goods came into his possession, in favour of a purchaser or mortgagee for valuable consideration without notice of the first one, the second grantee would have priority over the first, by virtue of the equitable doctrine that where two persons have equal equities the legal title will prevail (*a*). It makes no difference in this respect that since the passing of the Judicature Act equitable interests are recognized by all branches of the Court (*b*).

What has been above stated as to the operation and effect of an assignment of after-acquired chattels is still applicable to a bill of sale not coming within the Act of 1882; but the effect of that Act is to prohibit altogether and render void a bill of sale by way of security of after-acquired chattels, except such as are described in sub-s. 2 of s. 6 (*c*).

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(*z*) *Holroyd v. Marshall* (1864), 10 H. L. C. 191; 33 L. J. Ch. 193; *Clements v. Matthews* (1883), 11 Q. B. D. 808; 52 L. J. Q. B. 772; *Re Clarke* (1887), 36 Ch. D. 348; 56 L. J. Ch. 981; *Re Reis*, 1904, 2 K. B. 769; 73 L. J. K. B. 929; *Re Magnus*, 1910, 2 K. B. 1049. The same principle applies to other property besides chattels. Thus, an assignment of future book debts, though not limited to book debts in any particular business, would be good, see *Tailby v. Off. Receiver* (1888), 13 A. C. 523; 58 L. J. Q. B. 75. So also the copyright in a story when written: *Ward, Lock & Co. v. Long*, 1906, 2 Ch. 550; 75 L. J. Ch. 732.

(*a*) *Lazarus v. Andrade* (1880), 5 C. P. D. 318; 49 L. J. C. P. 847; *Joseph v. Lyons* (1884), 15 Q. B. D. 280; 54 L. J. Q. B. 1; *Hallus v. Robinson* (1885), 15 Q. B. D. 288; 54 L. J. Q. B. 364.

(*b*) The observation of Lopes, J., in *Lazarus v. Andrade*, that "property to be afterwards acquired may be, not only in equity, but also at law, the subject-matter of an assignment for value," must be understood as merely meaning that the validity of such an assignment must now be recognized by every branch of the Court.

(*c*) *Thomas v. Kelly* (1888), 13 A. C. 506; 58 L. J. Q. B. 66.

## DIVISION IV.

### DISPOSITIONS OF PERSONAL CHATTELS.

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#### No. I.

ASSIGNMENT *on sale of* PERSONAL CHATTELS *to a* PERSON  
*not in possession (a).*

THIS INDENTURE, made the — day of —, 19—, BETWEEN Parties.  
A. B., of, &c. (*Vendor*), of the one part, and C. D., of, &c. (*Purchaser*),  
of the other part :

WHEREAS the said A. B. is the tenant under the said C. D. of a dwelling-house situated, &c. (*describing it*), on a tenancy which will expire on the — day of — next : And the said A. B. is the owner of the furniture and effects in and about the said dwelling-house specified in the Schedule hereto :

AND WHEREAS the said C. D. has agreed to purchase the said furniture and effects from the said A. B. for the sum of £—, to be paid at once, but the said furniture and effects are to remain in the possession of the said A. B. until the said — day of — next :

NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £— now paid by the said C. D. to the said A. B. (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby assigns unto the said C. D.

ALL the furniture and effects specified in the Schedule hereto,

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(a) An assignment of chattels to a purchaser is unusual, as they are generally delivered to him, but cases may happen in which immediate possession cannot be conveniently given. This deed will require to be registered within seven clear days of its execution under s. 10 of the Bills of Sale Act, 1878 ; s. 8 of Act of 1882. Under s. 11 of the Act of 1878 the registration must be renewed every five years.

Covenant by Vendor to deliver possession and to repair and insure in meantime.

To HOLD unto the said C. D., but so that the same shall remain in the possession of the said A. B. until the — day of — next:

AND the said A. B. hereby covenants with the said C. D. that the said A. B., will deliver possession of the said furniture and effects to the said C. D. on the — day of — next, and will in the meantime keep the same in good repair and condition (reasonable wear and tear only excepted), and will also in the meantime keep the said furniture and effects insured against loss or damage by fire in the sum of £— at least, and in case of any loss or damage by fire will apply the money to be received in respect of the insurance thereof in restoring and reinstating the same.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Signed, sealed, and delivered by the above  
named A. B. in the presence of me, L. M.,  
of, &c. (b), a solicitor of the Supreme Court of  
Judicature, the effect of the above-written  
indenture having been first explained by me to  
the said A. B. (c).

L. M.

## No. II.

### ASSIGNMENT of GROWING CROPS of CORN and GRASS (d).

Parties.

THIS INDENTURE, made the — day of —, 19—, BETWEEN A. B., of, &c. (Vendor), of the one part, and C. D., of, &c. (Purchaser), of the other part:

(b) See Dissertation, p. 1045 *sup.*, as to the description of the witness.

(c) See s. 10 of Act of 1878. Although this section is repealed by s. 10 of the Act of 1882, bills of sale which do not secure the payment of money should still be attested in the manner prescribed by the Act of 1878: *Casson v. Churchley* (1884), 53 L. J. Q. B. 335; and see, *Swift v. Pannell* (1883), 24 Ch. D. 210; 53 L. J. Ch. 341. A bill of sale may be executed by attorney, and the grantee is not necessarily excluded from being the attorney: *Furnicall v. Hudson*, 1893, 1 Ch. 335; 62 L. J. Ch. 178.

(d) This is a bill of sale, and must be attested and registered under the Act of 1878, see s. 7; see also Act of 1882, s. 6.

WHEREAS the said A. B. has agreed to sell to the said C. D. the crops of corn and grass now growing on the pieces of land hereinafter described, and all the benefit and advantage thereof, at the price of £—— :

Agreement  
for sale.

NOW THIS INDENTURE WITNESSETH that in consideration, &c. (*the receipt, &c.*), the said A. B., As Beneficial Owner, hereby grants and assigns unto the said C. D.

Assignment of  
crops,

ALL the crops of corn and grass which are now growing, arising, and being on the several pieces of land hereinafter described (namely) :—(*here describe the lands specifically*) :

TOGETHER WITH FULL LIBERTY for the said C. D. and the servants, labourers, and other persons employed by him for that purpose, either with or without horses, carts and carriages, from time to time, and at any time or times during the ensuing months of —— and ——, between the hours of —— in the morning and —— in the evening of each day of the said months respectively, excepting the Sundays which shall occur therein, to enter upon the said pieces of land respectively, or any parts thereof, for the purpose of seeing the condition of the said crops, and for the purpose of reaping, mowing, and cutting the said crops of corn and grass respectively, and removing the same respectively, and also to do all such other acts and things as may be necessary or required for the purpose of obtaining the full benefit of these presents,

with power to  
Purchaser to  
enter on land  
to remove  
same.

To HOLD unto the said C. D. absolutely.

IN WITNESS, &c.

Signed, sealed, and delivered, &c.

(*Attestation as in last Precedent.*)

### No. III.

#### MEMORANDUM of RECEIPT for PURCHASE - MONEY of PERSONAL CHATTELS (*c*).

I, A. B., of, &c. (*Vendor*), hereby acknowledge that I have received from C. D., of, &c. (*Purchaser*), the sum of £——, being

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(*c*) This is a simple receipt, which can be taken under a 1*d.* stamp, and passes no interest in the chattels, which have been effectually transferred to the purchaser by the delivery. It is therefore not a bill of sale and does

the sum agreed to be paid by him to me for the purchase of the furniture and effects [*or goods and chattels or movable plant, machinery and things, or as the case may be*] in or about, &c., specified in the Schedule hereto [*or in the above-written inventory*], which furniture and effects [*or goods and chattels, or movable plant, machinery and things, or as the case may be*] have been delivered by me to and are now in the possession of the said C. D.

Dated this — day of —, 19—.

THE SCHEDULE ABOVE REFERRED TO.

(Signed) A. B.

#### No. IV.

#### MEMORANDUM of RECEIPT for PURCHASE-MONEY of FURNITURE and EFFECTS on Sale by a HUSBAND to his WIFE (*f*).

I, A. B., of, &c., acknowledge that I have this day received from C. B., my wife, out of her separate property, the sum of £—, being the sum agreed to be paid by her to me for the purchase of all the plate, plated articles, linen, china, books, pictures, furniture and other household effects in or about our dwelling-house (*describing it*).

Dated this — day of —, 19—,

(Signed) A. B.

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not require registration, see, *Manchester, Sheffield, &c. Ry. Co. v. N. Central Wagon Co.* (1883), 13 A. C. 554; 58 L. J. Ch. 219.

(*f*) This also is a simple receipt, and not a bill of sale requiring registration. It is assumed that there has been a parol contract for sale, and a *bona fide* payment of the purchase-money by the wife to the husband out of her separate estate before the receipt is given. A formal delivery of the chattels by the husband to the wife is unnecessary. As they will remain in the house in which they both reside, the possession after the sale will be deemed to be that of the wife: *Ramsay v. Margrett*, 1894, 2 Q. B. 18; 63 L. J. Q. B. 513. see, also *R. v. Murray*, 1906, 2 K. B. 385; 75 L. J. K. B. 593.

## No. V.

ASSIGNMENT of FURNITURE and EFFECTS by intended  
HUSBAND to WIFE before marriage (g).

THIS INDENTURE, made the — day of —, 19—, BETWEEN A. B., of, &c. (*intended husband*), of the one part, and Parties.  
C. D., of, &c. (*intended wife*), of the other part,

WITNESSETH that in consideration of the marriage intended Assignment.  
shortly to be solemnised between the said A. B. and the said C. D., the said A. B. hereby assigns unto the said C. D.

ALL the furniture and effects in and about, &c.,

To HOLD unto the said C. D. absolutely as from the date of the said intended marriage.

IN WITNESS, &c.

## No. VI.

ASSIGNMENT of CHATELS by HUSBAND to WIFE in  
consideration of a COVENANT by the WIFE to pay a certain  
DEBT of the HUSBAND (h).

THIS INDENTURE, made the — day of —, 19—, Parties  
BETWEEN A. B., of, &c. (*husband*), of the one part, and C. B.,  
the wife of the said A. B. (*wife*), of the other part,

WITNESSETH that in consideration of the covenant of the Husband  
said C. B. hereinafter contained, the said A. B. hereby assigns assigns furni-  
unto the said C. B. ture, &c. to  
wife.

ALL the plate, plated articles, linen, china, books, pictures,  
furniture and household effects in and about the dwelling-house,  
&c. (*describing it*), in which the said A. B. and C. B. reside,

---

(g) This, being a gift, must be by deed. As it is made in consideration of marriage, it is not a bill of sale, and need not be registered: Act of 1878, s. 4, and see Dissertation, p. 1045 *sup.* For Precedent of settlement of furniture, see Vol. II.

(h) This is a bill of sale, and must be registered under the Act of 1878, see *Ex p. Cor* (1875), 1 Ch. D. 302. The stamp will be *ad ratorem* as on a sale for the amount of the debt.

TO HOLD unto the said C. B. absolutely as her separate property :

Covenant by wife to pay a debt owing from husband.

AND the said C. B. hereby covenants with the said A. B. that she, the said C. B., will out of her separate property, on or before the — day of — next, pay to X. Y., of, &c., the sum of £— owing to him from the said A. B. upon the security, &c. (*describe security*).

IN WITNESS, &c.

Signed, sealed, &c. (*as in Precedent I., sup.*).

## NO VII.

### ASSIGNMENT *on SALE of a REVERSIONARY INTEREST in PLATE and other articles specifically bequeathed by a WILL (i).*

Parties.

THIS INDENTURE, made the — day of —, 19—, BETWEEN A. M., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part (*Recite Will whereby certain plate and other articles were bequeathed to trustees in trust for the testator's wife, L. M., for life and then for his only son, the Vendor, absolutely, and the provisions, if any, in the Will as to an inventory and as to the insurance by the usufructuary on death and probate of Will*):

Recite bequest of plate, &c., to wife for life, then to Vendor.

AND WHEREAS the said L. M. is still living and the plate and other articles bequeathed as aforesaid are in her possession, and the particulars thereof are stated in an inventory made by the trustees of the said Will, a copy whereof is hereto annexed by way of schedule :

Agreement for sale.

AND WHEREAS the Vendor has agreed to sell his reversionary interest in the said plate and other articles to the Purchaser at the price of £— :

NOW THIS INDENTURE WITNESSETH that in consideration, &c. (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser

Assignment of plate, &c., and benefit of insurance against fire to Purchaser.

ALL the plate and other articles to which the Vendor is entitled in reversion expectant on the death of the said L. M.

(i) This is a bill of sale, and must be registered under the Act of 1878. Notice of it should be given to the trustees of the Will.

under the hereinbefore recited bequest [And the benefit of any insurance or insurances of the said plate and other articles effected or to be hereafter effected by the said L. M. or by the trustees against loss or damage by fire pursuant to the direction for that purpose contained in the said Will],

To HOLD unto the Purchaser absolutely, subject to the legacy duty which will be payable thereon at the death of the said L. M. Habendum.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Signed, sealed, &c. (*as in Precedent I., sup.*).

### No. VIII.

ASSIGNMENT of a SHARE of FURNITURE, &c., comprised in a specific bequest by one CO-LEGATEE to the OTHERS (*k*).

THIS INDENTURE, made the — day of —, 19—, Parties.  
BETWEEN A. B., of, &c., of the one part, and C. B., of, &c., and D. B., of, &c., of the other part (*Recite Will whereby the furniture, &c., in the testator's dwelling-house was bequeathed to his three daughters, A. B., C. B., and D. B. equally; death of testator and probate of Will*):

AND WHEREAS it is part of a family arrangement that the said A. B. shall make such assignment as is hereinafter contained: Agreement to assign.

NOW THIS INDENTURE WITNESSETH that the said A. B., Assignment.  
in consideration of her natural love and affection for her sisters the said C. B. and D. B. and for divers other good causes and considerations, hereby assigns and releases unto the said C. B. and D. B.

ALL the share and interest of the said A. B. in the furniture, plate, plated articles, linen, china, books, pictures and household

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(*k*) This is a bill of sale within the meaning of the Act of 1878, but as the chattels will not, after the assignment, be in the possession or apparent possession (see *Re Eales* (1906), 54 W. R. 202) of the assignor, registration and the other formalities required by s. 8 may be dispensed with. It is true that if A. B. were afterwards to make another absolute assignment to a different person, who registered it, the latter would have priority, but such an improbable contingency may be disregarded.

effects comprised in the hereinbefore recited bequest, or such of them as now remain in the said dwelling-house,

To hold unto the said C. B. and D. B. equally.

IN WITNESS, &c.

### No. IX.

#### BILL of SALE of CHATTELS by way of MORTGAGE, being the STATUTORY FORM (I).

Parties.

THIS INDENTURE, made the — day of —, 19—, BETWEEN A. B., of, &c. (*Mortgagor*), of the one part, and C. D., of, &c. (*m*) (*Mortgagee*), of the other part,

Assignment of chattels to Mortgagee to secure payment of principal money and interest.

WITNESSETH that in consideration of the sum of £— (*n*) now paid to A. B. by C. D. (the receipt of which the said A. B. hereby acknowledges (*o*)) (*or whatever else the consideration may be*), he, the said A. B., doth hereby assign (*p*) unto the said C. D., his executors, administrators and assigns

ALL AND SINGULAR the several chattels and things specifically described in the Schedule hereto annexed, by way of security for the payment of the sum of £— and interest thereon at the rate of £— per cent. per annum (*or whatever else may be the rate*):

Agreement by Mortgagor to pay principal money and interest.

AND the said A. B. doth further agree and declare that he will duly pay to the said C. D. the principal sum aforesaid, together with the interest then due, by equal payments of £—, on the — day of — (*q*) (*or whatever else may be the stipulated times or time of payment*):

(*l*) See Schedule to Act of 1882, and s. 9 of that Act.

(*m*) The grantee's address must be inserted: *Altree v. A.*, 1898, 2 Q. B. 267; 67 L. J. Q. B. 882.

(*n*) As to what is proper consideration, see Dissertation, p. 1050 *sup*.

(*o*) The receipt must be acknowledged; *Daries v. Jenkins*, 1900, 1 Q. B. 133; 69 L. J. Q. B. 187.

(*p*) Covenants for title must not be inserted: *Ex p. Stanford* (1886), 17 Q. B. D. 259; 55 L. J. Q. B. 341.

(*q*) The money must not be payable on demand: *Hetherington v. Groome* (1884), 13 Q. B. D. 789; 53 L. J. Q. B. 576; *Sibley v. Higgs* (1885), 15 Q. B. D. 619; 54 L. J. Q. B. 525; but may be payable "on or before" a certain date: *De Braam v. Ford*, 1900, 1 Ch. 142; 69 L. J. Ch. 82. The amount of interest and the period when the money is payable must be certain: *Attia v. Finch* (1901), 91 L. T. 70; and see *Linfoot v. Pockett*, 1895, 2 Ch. 835; 64 L. J. Ch. 752.

AND the said A. B. doth also agree with the said C. D. that he will (*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*):

PROVIDED ALWAYS, that the chattels hereby assigned shall not be liable to seizure, or to be taken possession of by the said C. D. for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882 (*r*).

Chattels to be liable to seizure for causes specified in s. 7.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Signed and sealed by the said  
A. B. in the presence of me, )

E. F. (*add witness's name, address,  
and description*) (s).

# No. X.

## BILL of SALE of CHATTELS by way of MORTGAGE, being the STATUTORY FORM with the blanks filled up (*t*).

THIS INDENTURE, made the — day of —, 19—, BETWEEN Parties.  
A. B., of, &c. (*Mortgagor*), of the one part, and C. D., of, &c.  
(*Mortgagee*), of the other part,

WITNESSETH that in consideration of the sum of £ — (*u*)  
now paid to the said A. B. by the said C. D. (the receipt of which  
the said A. B. hereby acknowledges) (*x*) he, the said A. B. (*y*), doth

(*r*) The proviso must be inserted: *Thomas v. Kelly* (1889), 13 A. C. at p. 519, *per* Lord Macnaghten; 58 L. J. Q. B. 66.

(*s*) See Dissertation, p. 1046 *sup.*, as to the description of the witness.

(*t*) See notes to last Precedent.

(*u*) This must not be less than £30; Act of 1882, s. 12; *Davis v. Usher* (1884), 12 Q. B. D. 490; 53 L. J. Q. B. 422; *Darlow v. Blund*, 1897, 1 Q. B. 125; 66 L. J. Q. B. 157. If the consideration is an antecedent debt, say in consideration of the sum of £ — now owing from the said A. B. to the said C. D.; and see Dissertation, p. 1050 *sup.*

(*x*) The receipt must be acknowledged: *Davis v. Jenkins*, 1900, 1 Q. B. 133; 69 L. J. Q. B. 187.

(*y*) Covenants for title must not be inserted: *Ex p. Stanford* (1886), 17 Q. B. D. 259; 55 L. J. Q. B. 341.

Assignment  
of chattels to  
Mortgagee to  
secure pay-  
ment of prin-  
cipal money  
and interest.

hereby assign unto the said C. D., his executors, administrators and assigns,

ALL AND SINGULAR the several chattels and things specifically described in the Schedule hereto annexed by way of security for the payment of the sum of £—— and interest thereon at the rate of £—— per cent. per annum :

Agreement by  
Mortgagor to  
pay principal  
money and  
interest,

AND the said A. B. doth further agree and declare that he will duly pay to the said C. D. the principal sum aforesaid, together with the interest then due, on the —— day of —— next, and if the said principal sum is not paid on that day, then will pay interest thereon, or on so much thereof as shall for the time being remain owing, at the rate aforesaid, half-yearly on the —— day of —— and the —— day of —— (z):

to insure  
against fire ;

AND the said A. B. doth also agree (a) with the said C. D. that he will at all times during the continuance of this security keep the said chattels and things insured against loss or damage by fire, in the sum of £—— at least, in the —— Insurance Office, or in some other insurance office to be approved of by the said C. D., his executors, administrators or assigns : And also duly and regularly pay the rent, rates and taxes payable by him in respect of the messuage or dwelling-house in which the said chattels and things are ; and also will produce to the said C. D., his executors, administrators or assigns, upon demand in

to pay rent,  
rates and  
taxes, and pro-  
duce receipts.

Variation  
where money  
payable by  
instalments.

(z) If the money is to be paid by instalments, the following form of covenant may be substituted:—

AND the said A. B. further agrees and declares that he will pay to the said C. D. the said principal sum of £—— by equal monthly instalments of £—— each, the first instalment to be paid on the 1st day of —— next, and the remaining instalments to be paid on the first day of every subsequent calendar month until the whole principal money shall be paid, and also will on the same monthly days respectively pay to the said C. D. the interest then due on the principal sum for the time being remaining unpaid :

PROVIDED ALWAYS, that if any monthly instalment shall be in arrear for fourteen days, the whole of the principal money then remaining unpaid shall become payable immediately.

(a) These covenants can be inserted, and do not affect the validity of the bill of sale, see Dissertation, p. 1052 *sup.*

writing (*b*), the last receipt for such rent, rates or taxes, and the policy of such insurance as aforesaid and the receipt for the last premium payable in respect thereof, unless he shall have a reasonable excuse for not doing so :

AND that if default shall at any time be made by the said A. B. in effecting or keeping on foot such insurance, or in paying the said rent, rates and taxes, it shall be lawful for the said C. D., his executors, administrators or assigns, to insure and keep insured the said chattels and things, or to pay the said rent, rates and taxes (as the case may be), and that all moneys expended by him or them for any of the purposes aforesaid, together with interest thereon at the rate of £5 per cent. per annum from the time of the same having been expended, shall on demand be repaid to him or them by the said A. B., and until such payment shall be a charge on all the said chattels and things (*c*) :

Power to Mortgagee to insure, &c., in case of Mortgagor's default.

PROVIDED ALWAYS (*d*), that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said C. D. for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.

Chattels to be liable to seizure for causes specified in s. 7.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO (*e*).

Signed and sealed by the said }  
A. B. in the presence of me, }

E. F. (*add witness's name, address,  
and description*).

(*b*) See *Cartwright v. Regan*, 1895, 1 Q. B. 900 ; 64 L. J. Q. B. 507.

(*c*) See *Ex p. Stanford* (1886), 17 Q. B. D. 259 ; 55 L. J. Q. B. 341.

(*d*) A power to seize and take possession, and to sell after five days, may be conferred in express terms, see cases cited in Dissertation, p. 1049 *sup*. But it is unnecessary to do so, as these powers are conferred by ss. 7 and 13 of the Act of 1882 by implication, see, *Johnson v. Diprose*, 1893, 1 Q. B. 512 ; 62 L. J. Q. B. 291.

(*e*) The schedule should contain a specific description of the chattels, *i.e.*, they should be described with such particularity as is used in an ordinary business inventory of such chattels, see, *Witt v. Banner* (1887), 20 Q. B. D. 114 ; 57 L. J. Q. B. 141 ; *Carpenter v. Deau* (1889), 23 Q. B. D. 566 ; *Hickley v. Greenwood* (1890), 25 Q. B. D. 277 ; 59 L. J. Q. B. 413 ; and *Davidson v. Carlton Bk.*, 1893, 1 Q. B. 82 ; 62 L. J. Q. B. 111, in which it was held that "450 pictures in gilt frames," and "twenty-one milch cows," was not sufficient ; but "roan horse Drummer, brown mare and foal, three trade carts," and "1,800 volumes of books as per catalogue" (which was not

Description in Schedule.

## No. XI.

TRANSFER of a BILL OF SALE (*by indorsement*) (*f*).

Parties.

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN the within-named C. D. (*Transferor*), of the 1st part, the within-named A. B. (*Mortgagor*), of the 2nd part, and E. F., of, &c. (*Transferee*), of the 3rd part :

Recital as to  
state of debt  
and agreement  
for transfer.

WHEREAS the within-written Indenture (hereinafter called the Bill of Sale) was duly registered as a bill of sale on the —— day of ——, 18— :

AND WHEREAS the principal sum of £—— secured by the Bill of Sale still remains owing, but all interest thereon has been paid up to the date hereof :

AND WHEREAS the said E. F. has, at the request of the said A. B., agreed to pay to the said C. D. the sum of £—— on having a transfer of the Bill of Sale :

NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £—— paid to the said C. D. by the said E. F. (the

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registered), was sufficient. If the bill of sale is of growing crops they should be described in the schedule, and not in the body of the deed, thus :—

ALL the crops of grass, wheat and barley, and other crops now growing in or upon the farm and lands called ——, situated, &c., now in the occupation of the Mortgagor.

If it is intended to include in the bill of sale fixtures, plant or machinery, to be substituted for the existing fixtures, &c., the following words should be added in the schedule after the specific description of the existing things :—

AND ALSO all the fixtures, plant and trade machinery which may be used in, attached to, or brought upon the said —— (*house or land*), in substitution for any of the like fixtures, plant and trade machinery above specifically described.

Where the chattels comprised in a bill of sale are of a kind which requires to be replaced from time to time by the substitution of other similar chattels, a more specific description of them in the schedule is necessary than in the case of chattels which do not require to be replaced with the same degree of frequency : *Darvis v. Jenkins*, 1900, 1 Q. B. 133 ; 69 L. J. Q. B. 187.

(*f*) This does not require registration, see Act of 1878, s. 10 ; *Horne v. Hughes* (1881), 6 Q. B. D. 676 ; *Ex p. Turquand* (1885), 14 Q. B. D. 636 ; 54 L. J. Q. B. 242.

receipt whereof the said C. D. hereby acknowledges), the said C. D., As Mortgagee, hereby assigns unto the said E. F.

Mortgagee assigns principal money and chattels to Transferee,

THE principal sum of £—— secured by the Bill of Sale and all interest henceforth to become due thereon, And also the chattels and things comprised in the Bill of Sale,

To HOLD unto the said E. F. subject as to the said chattels and things to the right or redemption subsisting therein under the Bill of Sale.

subject as to chattels to equity of redemption.

IN WITNESS, &c.

## No. XII.

### MEMORANDUM *of* SATISFACTION INDORSED *on a* BILL *of* SALE (*g*).

MEMORANDUM that all the money secured by the within-written deed has been satisfied.

Dated this —— day of ——.

(Signed) C. D.

WITNESS,

## No. XIII.

### CONSENT *by* GRANTEE *of* BILL *of* SALE *to an* ORDER *to enter* SATISFACTION.

In the High Court of Justice,  
King's Bench Division.

I, C. D., of, &c., Do HEREBY CONSENT to an order that a memorandum of satisfaction be written upon the copy of the bill of sale given to secure the sum of £—— and interest bearing date the —— day of ——, 19—, made between A. B. of the one part and me of the other part, and filed on the —— day of ——, 19—, the debt for which the said bill of sale was given as a security having been satisfied.

Dated the —— day of ——, 19—.

(Signed) C. D.

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(*g*) See Act of 1878, s. 15.

## No. XIV.

AFFIDAVIT to be FILED with a BILL OF SALE (*h*).

In the High Court of Justice,

— Division.

19—. No.—.

I, L. M., of —, in the County of —, make oath and say as follows:—

1. THE paper writing hereunto annexed and marked A is a true copy (*i*) of a bill of sale, and of the schedule or inventory

Occupation of assignor and attesting witnesses must be stated in affidavit.

(*h*) S. 10 of the Act of 1878, which is the same in this respect as s. 1 of the (repealed) Act of 1854 (17 & 18 Vict. c. 36), requires that the affidavit to be filed with the bill of sale shall state the residence and occupation of the assignor and every attesting witness.

The word "occupation" means the business in which a man is usually engaged to the knowledge of his neighbours so that he can easily be identified by local inquiries: *Luckin v. Hamlyn* (1870), 21 L. T. 366; *Neverson v. Seymour* (1908), 97 L. T. 788. A discrepancy in the addresses given in the bill of sale and the affidavit does not necessarily affect its validity: *Simmons v. Woodward*, 1892, A. C. 100; 61 L. J. Ch. 252; but see *Marks v. Derrick* (1899), 80 L. T. 60.

Cases of insufficiency of description.

It has been held that "gentleman" is not a sufficient description of a solicitor or of a solicitor's clerk: *Tuton v. Sawoner* (1858), 27 L. J. Ex. 293; *Dryden v. Hope* (1860), 3 L. T. 280; or of a clerk in the audit office: *Allen v. Thompson* (1856), 1 H. & N. 15; 25 L. J. Ex. 249; or of any person having a fixed profession, business, or avocation: *Adams v. Graham* (1864), 33 L. J. Q. B. 71; *Beales v. Tenant* (1860), 6 Jur. (N. S.) 628; 29 L. J. Q. B. 188; but it is not necessary to mention an avocation which has only been temporarily or casually followed, or one in which the grantor is not at present actively engaged, being out of employment: *Brodrick v. Scale* (1871), L. R. 6 C. P. 98; 40 L. J. C. P. 130; *Smith v. Cheese* (1875), 1 C. P. D. 60; 45 L. J. C. P. 156; *Morcroft v. South Yorkshire Co.* (1859), 3 H. & N. 798; 28 L. J. Ex. 114. A lessee and manager of a theatre, or a merchant, is not properly described as "Esquire": *Erp. Hooman* (1870), L. R. 10 Eq. 63; 39 L. J. Bk. 4; *Re O'Connor* (1872), 27 L. T. 27; nor a clerk in an accountant's department as an "accountant": *Larchin v. N. W. Deposit Bk.* (1875), L. R. 10 Ex. 64; 44 L. J. Ex. 71. On the other hand, a clerk in the Admiralty has been held to be sufficiently described as a Government clerk: *Grant v. Shaw* (1872), L. R. 7 Q. B. 700; 41 L. J. Q. B. 305; and a grantor who has been in business until a few weeks before the bill of sale and was then in treaty for another business, was held to be properly described as "widow," see *Re Esther Darey* (1881), W. N. 56, 109; 45 L. T. 268. But a dressmaker is not properly described as a "married woman": *Kemble v. Addison*, 1900, 1 Q. B. 430; 69 L. J. Q. B. 299.

(*i*) See *Cotes v. Moore*, 1903, 2 K. B. 141; 72 L. J. K. B. 539; also *Sharp v. McHenry* (1887), 38 Ch. D. 427; 57 L. J. Ch. 961.

Residence within meaning of Act

The residence meant by the Act is the place where the person carries on

business and can be found during the day, not the place where he merely sleeps at night: *Attenborough v. Thompson* (1858), 2 H. & N. 559; 27 L. J. Ex. 23; *Blackwell v. England* (1858), 8 El. & Bl. 541; 27 L. J. Q. B. 124; *Briggs v. Boss* (1868), L. R. 3 Q. B. 268; 37 L. J. Q. B. 101; *Heuer v. Cor* (1861), 30 L. J. Q. B. 73; *Blount v. Harris* (1879), 4 Q. B. D. 603; 48 L. J. Q. B. 159. Where a house is in a street, the number must be accurately stated: *Murray v. Mackenzie* (1875), L. R. 10 C. P. 625; 44 L. J. C. P. 313; but if the description given is such as cannot mislead creditors, an unimportant mistake will not be fatal, as where New Street, Blackfriars, was stated as in the county of Middlesex instead of in the City of London: *Heuer v. Cor*, *ubi. sup.*; *Ex p. M'Hattie* (1879), 10 Ch. D. 398; 48 L. J. Bk. 26.

A description of the residence of the attesting witness in the introductory part of the affidavit is sufficient: *Blaiberg v. Parke* (1882), 10 Q. B. D. 90; 52 L. J. Q. B. 110.

An affidavit filed with a bill of sale, describing a company by its name, and stating the address of its principal office, is a sufficient compliance with the Act: *Shears v. Jacob* (1866), L. R. 1 C. P. 513; 35 L. J. C. P. 241.

Description of company.

It is not sufficient that the bill of sale contains a description of the residence and occupation of the assignor and the attesting witnesses; the affidavit filed with the bill of sale must contain such description also, either expressly or by reference. Thus, it is not sufficient to state in the affidavit that the grantor is the person named in the bill of sale, unless it be averred that he is truly described therein: *Hatton v. English* (1857), 7 El. & Bl. 94; 26 L. J. Q. B. 161; *Pickard v. Bretz* (1859) 5 H. & N. 9; 29 L. J. Ex. 18; *Foulger v. Taylor* (1860), 5 H. & N. 202; 29 L. J. Ex. 154.

Affidavit must contain the description either expressly or by reference.

The description of the residence of the grantor to be stated in the affidavit should be his residence at the time of swearing the affidavit, and not at the time of executing the bill of sale: *Button v. O'Neill* (1879), 4 C. P. D. 354; 48 L. J. C. P. 368. But in a case where between the date of the execution of the bill of sale and the date of the affidavit the maker left his residence and sailed for America, it was held that the affidavit which described him as in the bill of sale was sufficient: *Re Heuer* (1882), 21 Ch. D. 571; 51 L. J. Ch. 904.

Description of residence of grantor.

The affidavit must also state that the attesting witness was present at the time of the execution by the grantor and witnessed the due execution by him: *Ford v. Kettle* (1882), 9 Q. B. D. 139; 51 L. J. Q. B. 558; *Sharpe v. Birch* (1881), 8 Q. B. D. 111; 51 L. J. Q. B. 64.

Affidavit must state that attesting witness was present.

If the grantee lives and carries on business at A., and has also other places of business, he is sufficiently described in the affidavit as residing at A., without any mention of the other places: *Greenham v. Child* (1890), 24 Q. B. D. 29; 59 L. J. Q. B. 27.

Where there are two residences.

The affidavit made on the re-registration of a bill of sale must correspond with that made on the original registration: *Ex p. Webster* (1883), 22 Ch. D. 136; 52 L. J. Ch. 375.

Affidavit on re-registration.

An affidavit of the execution of a bill of sale sworn before the solicitor acting for the grantee is void: *Baker v. Ambrose*, 1896, 2 Q. B. 372; 65 L. J. Q. B. 589.

Affidavit must be sworn before independent solicitor.

thereto annexed or therein referred to, and of the [*or every, if there are two attesting witnesses*] attestation of the execution thereof, as made and given and executed by A. B.

2. THE said bill of sale was made and given by the said A. B. on the — day of —, 19—.

3. I WAS present and saw the said A. B. duly execute the said bill of sale on the said — day of —, 19—.

4. THE said A. B. resides at, &c. (*state residence at time of swearing affidavit*), and is, &c. (*state occupation*).

5. THE name L. M. subscribed to the said bill of sale as that of the witness attesting the due execution thereof is in my proper handwriting (*k*).

6. I RESIDE at —, in the County of —, and am (*occupation*).  
SWORN, &c.

#### No. XV.

#### AGREEMENT accompanying a PLEDGE of CHATTELS to secure a DEBT (*l*).

Parties.

AN AGREEMENT, made the — day of —, 19—, BETWEEN A. B., of, &c. (*Pledgor*), of the one part, and C. D., of, &c. (*Pledgee*), of the other part:

Recital of loan and deposit of chattels with lender.

WHEREAS the said C. D. has this day lent to the said A. B. the sum of £—, and the said A. B. has deposited with the said C. D. the chattels mentioned in the Schedule hereto:

Agreement by Borrower to pay loan with interest.

NOW IT IS HEREBY AGREED as follows:—

1. THE said A. B. shall, on the — day of — next pay to the said C. D. the sum of £—, with interest thereon at the rate of £— per cent. per annum, from the day of the date

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(*k*) If there are two attesting witnesses, substitute for paragraph 5:—

5. THE names L. M. and G. H. subscribed as witnesses attesting the execution of the said bill of sale are respectively in the handwriting of me and of the said G. H. I reside at —, and am, &c., and the said G. H. resides at —, and is, &c.

(*l*) This is not a bill of sale, and does not require registration.

of these presents, and if the said sum shall not be paid on that day the same shall continue to bear interest at the rate aforesaid until paid off.

2. THE said C. D. shall retain the chattels deposited with him as aforesaid as a pledge for the payment of the said debt and interest, and if default shall be made in payment of the said debt and interest on the said — day of — next, the said C. D. may at any time thereafter sell the said chattels or any of them either by public auction or private contract, with liberty to buy in at any sale by auction, and to rescind or vary any contract for sale, and to resell without being answerable for any loss arising thereby: AND the said C. D. shall, out of the proceeds of such sale, in the first place pay and retain all costs and expenses incurred by him in or about any such sale or attempted sale, or otherwise in relation to this security, and in the next place pay and retain all money owing to him under this agreement, and shall pay the surplus (if any) to the said A. B.

Chattels to be a pledge for repayment and Pledgee to have power to sell in case of default.

Trusts of sale money.

3. THE said C. D. shall be at liberty, if he thinks fit, to insure the said chattels, or any of them, against loss or damage by fire, and all money expended by him in or about such insurance shall be repaid to him on demand by the said A. B., with interest thereon at the rate aforesaid, from the time of expending the same, and the same shall also be payable out of the proceeds of the sale of the said chattels in like manner as the said debt of £—— and the interest thereon.

Pledgee to be at liberty to insure against fire and to be repaid expense of insurance.

4. THE said C. D. shall not be answerable for any loss or injury to the said chattels during the continuance of this security, unless the same shall arise from his own wilful act or default.

Pledgee not to be answerable for injury to chattels.

5. THE powers hereby conferred on the said C. D. shall be exercisable by his executors, administrators or assigns.

AS WITNESS the hands of the parties hereto.

THE SCHEDULE ABOVE REFERRED TO.

## D.—DISSERTATION ON REGISTERED LAND, OR LAND IN A COMPULSORY REGISTRATION DISTRICT.

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25 & 26 Vict.  
c. 53;  
38 & 39 Vict.  
c. 87;  
60 & 61 Vict.  
c. 65.

A VOLUNTARY system of registration of title to land has been in operation since 1862, first, under the Land Registry Act, 1862, and since 1875 under the Land Transfer Act of that year. The Act of 1875 has been amended by the L. T. Act, 1897, and the latter Act contains provisions enabling registration to be made compulsory under Orders in Council within a limited area, to be gradually extended to other parts of the Kingdom, should the partial experiment prove successful. Rules have been made under the Acts for regulating the practice and prescribing the forms to be used (*a*).

It is proposed first to describe the system established by the Acts and Rules, and secondly to consider its effect on conveyancing practice in relation to sales, mortgages, and other matters.

### I.

#### *As to First Registration.*

Who may get  
registered.

Any person entitled to or capable of disposing of, for his own benefit, an estate in fee simple in land (which term includes an undivided share of land, and all hereditaments, corporeal and incorporeal (*b*), but not copyhold land (*c*)), or any person who

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(*a*) See Land Transfer Rules, 1903, 1907 and 1908 (Consolidated), which are here referred to as L. T. R., 1908, or the Rules. It seems probable that the Royal Commissioners on Land Transfer will recommend some drastic alterations in the Acts and Rules. In this Dissertation the references to "Forms" are to those in the Schedule to the Rules.

(*b*) Act of 1897, ss. 14, 24.

(*c*) Act of 1875, s. 2.

has contracted to buy such an estate, may get himself, or his nominee or nominees, registered as a proprietor or proprietors, either with an absolute title or good leasehold title or with a possessory title only, but, in case of land contracted to be bought, the vendor must consent to the application (*d*). Under rr. 157 and 174 purchasers and chargees can obtain provisional registration.

A tenant for life within the meaning of the Settled Land Acts may either require himself to be registered or obtain the registration of the trustees having a power of sale, or of the persons having an overriding power of appointment of the fee simple (*e*). The usual practice is for the tenant for life to be registered.

Tenant for life.

A trustee for sale, or a trustee, mortgagee, or other person having a power of sale, may apply to be registered, with the consent of the person (if any) whose consent is required to the exercise of the power of sale (*f*). It is proper for a trustee holding land on trust for sale to be registered, but not as a rule a trustee having a mere power of sale.

Trustees and mortgagees.

Priority may now be obtained for registration as first proprietor by means of a notice (*g*).

Priority notice.

Where an absolute title is required, the title must be approved by the registrar (*h*). Where a possessory title only is required, the applicant must give such evidence of title as may be prescribed (*i*). In a compulsory district it is now usual, by reason of the fees being the same, to apply in the first instance, on a sale, for an absolute title. In any case full particulars of the title have to be furnished (*k*). Wider facilities are now given to obtain absolute titles (*l*); but the applicant for first registration should remember that his registration with an absolute title

Steps to be taken to obtain registration.

(*d*) Act of 1875, s. 5.

(*e*) Act of 1897, s. 6 (1).

(*f*) Act of 1875, s. 68.

(*g*) R. 95, varying r. 111.

(*h*) Act of 1875, s. 6; rr. 18—67.

(*i*) Act of 1875, s. 6; rr. 18—67.

(*k*) Rr. 18, 19.

(*l*) Rr. 27 and 39.

may, if the title is defective, involve him in a liability to make good a loss to the indemnity fund.

Incumbrances affecting the title are now entered on the register, whether the title registered is absolute or possessory (*m*).

Effect of first registration with absolute title.

First registration of freeholds with an absolute title vests in the proprietor an estate in fee simple in such land, together with all rights, privileges, and appurtenances belonging or appurtenant thereto, or appertaining or reputed to appertain to the land or enjoyed therewith, or reputed as part or appurtenant thereto, subject to registered incumbrances (if any), to such liabilities as are in the Act declared not to be incumbrances, and subject also, where such first proprietor is not entitled for his own benefit, as between himself and any persons claiming under him, to any unregistered estates, rights or equities to which such persons may be entitled (*n*).

If the applicant registers with an absolute title without having investigated the title for forty years back, and a defect is subsequently discovered which would have been disclosed if he had made a full investigation, it is possible that under s. 7 (6) of the Act of 1897 he might be called on to make good the loss to the indemnity fund.

With possessory title.

Registration with a possessory title does not affect or prejudice any adverse right subsisting or capable of arising at the time of registration, whether the right appears in the register or not, but with this exception it has the same effect as registration with an absolute title (*o*).

With qualified title.

The registrar may certify a title as established for a limited period, or subject to reservations, and this is called a qualified title (*p*).

Registration of leasehold land.

The title to leasehold land may be registered subject to provisions similar to those relating to freehold land, and for this

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(*m*) R. 43.

(*n*) Act of 1875, ss. 7, 18, as amended by the Act of 1897; rr. 254, 255.

(*o*) Act of 1875, s. 8; rr. 37 and 57.

(*p*) Act of 1875, s. 9; rr. 36, 42, 58 and 59.

purpose leasehold land includes land held under a sub-lease, but not a term created for mortgage purposes (*q*). Leasehold land held under a lease containing an absolute prohibition against alienation is not to be registered, and land held under a lease prohibiting alienation without licence can only be registered with a qualified title (*r*).

Where the original lessee is registered before he has dealt with the lease, then the land may be registered with a "good leasehold title." This does not give any guarantee that the lessor had power to grant the lease, but, subject to that, is the same as an absolute title (*s*).

With "good  
leasehold  
title."

S. 18 of the Act of 1875, as amended by the Act of 1897, provides that all registered land shall, unless the contrary is expressed on the register, be deemed to be subject to such of the following liabilities, rights and interests as may be for the time being subsisting in reference thereto, and such liabilities, rights and interests are not to be deemed incumbrances within the meaning of the Acts (that is to say):—

Liability of  
registered land  
to easements  
and certain  
other rights.

Liability to repair highways by reason of tenure, quit rents, Crown rents, heriots, and other rents and charges having their origin in tenure ;

Succession duty and estate duty (subject to s. 13 of the Act of 1897 ; see rr. 208—211), land tax, tithe rent-charge, and payments in lieu of tithes, or of tithe rent-charge ;

Rights of common, rights of sheepwalk, rights of way, watercourses, and rights of water, and other easements ;

Rights to mines and minerals, and rights of entry, search, and user, and other rights and reservations incidental to or required for the purpose of giving full effect to the enjoyment of rights to mines and minerals, or of property in mines or minerals, where such rights have been created previously to the registration of the land, or to the 1st January, 1898 ;

Rights of fishing and sporting, seigniorial and manorial rights of all descriptions, and franchises, exercisable over the registered lands ;

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(*q*) Act of 1875, ss. 11—16, as amended by the Act of 1897 ; see also rr. 51—67.

(*r*) Act of 1875, s. 11 ; r. 62, and see r. 41.

(*s*) Rr. 52, 54, 56 and 60. As to the provisional registration of purchasers and chargees, see rr. 157, 174.

Liability to repair the chancel of any church, liability in respect of embankments, sea and river walls, and drainage rights, customary rights, public rights, and *profits à prendre*, and, subject to the provisions of the Act of 1897, rights acquired or in course of being acquired under the Limitation Acts ;

Leases or agreements for leases and other tenancies for any term not exceeding twenty-one years, or for any less estate, in cases where there is an occupation under such tenancies ;

Further, it is provided (*t*) that rights and appurtenances reputed to appertain or to be parcel to land are not to be deemed to be incumbrances.

Exemptions from land tax and tithe rent-charge may be notified on register.

Where it is proved to the satisfaction of the registrar that the land is exempt from tithe or tithe rent-charge, or land tax, he may notify that fact on the register (*u*). Where it is proved to the satisfaction of the registrar that the right to mines or minerals is vested in the proprietor of the land, he may register such proprietor as the proprietor of the mines and minerals also (*x*). Where it is proved to the satisfaction of the registrar that the right to any mines or minerals is severed from the land, he may enter a note to that effect (*y*). And where the existence of any such liabilities as are above mentioned is proved to the satisfaction of the registrar, he may enter a notice of them on the register, and the exercise of this power is obligatory where a liability to mining rights is disclosed by the abstract (*z*).

Separate ownership of mines may be registered. Other liabilities may be noted on register.

As to succession and estate duties.

With respect to succession duty and estate duty, s. 13 of the Act of 1897 provides as follows :—

- (1) On every application to register land with an absolute title, or to register a transmission of land, the registrar shall inquire as to succession duty and estate duty.
- (2) If on such application it appears that there is, or is capable of arising, any such liability to succession duty or estate duty as would affect the purchaser from the person to be registered as

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(*t*) R. 255, see also r. 215.

(*u*) R. 212.

(*x*) R. 213.

(*y*) R. 214.

(*z*) Act of 1875, s. 18, as amended by the Act of 1897, First Schedule.

proprietor if the land were unregistered, the registrar shall enter notice of the liability on the register in the prescribed manner.

(3) Succession duty and estate duty shall not

(a) unless so noted on the register, or

(b) unless, in the case of a possessory title, the liability to the duty was, at the original registration of the land, subsisting or capable of arising, or

(c) unless, in the case of a qualified title, the liability to the duty was included in the exceptions made on such original registration of the land,

affect a *bonâ fide* registered purchaser for full consideration in money or money's worth, although he may have received extraneous notice of the liability in respect thereof.

The Commissioners are, if required, on first registration of the land or of a charge, bound to give a certificate as to freedom from succession duty, and the registrar will make a note of the fact (a).

*Registered Charges.*

A registered proprietor of freehold or leasehold land may, in the prescribed manner, charge such land with the payment at an appointed time of any principal sum of money, either with or without interest. The charge is completed by entering on the register the chargee as the proprietor of the charge, and the particulars of the charge. The charge is subject to the provisions as to qualified and possessory titles (b).

A registered charge implies a covenant with the registered proprietor for the time being of the charge to pay the principal sum and interest at the appointed time, and also a covenant, if the principal sum is not paid at the appointed time, to pay interest thereon half-yearly. It also implies, in the case of leaseholds, a covenant to pay the rent and observe the covenants in the lease, and to indemnify the proprietor of the charge (c).

(a) Act of 1875, s. 18 (7) (b); see further, as to death duties, rr. 208-211, Forms 55 and 56 in the Schedule to the Rules.

(b) Act of 1875, s. 22, as amended by Act of 1897, First Schedule; Act of 1897, ss. 6 (7) and 9; see generally as to charges, rr. 158-174.

(c) Act of 1875, ss. 23, 24; r. 99 enables the covenants under the Conv. Act, 1881, s. 7 (1), which are wider than those in s. 24 of the Act of 1875, to be implied. If importance is attached to these covenants the registered

Charge  
registered  
land.

What is  
implied in a  
registered  
charge.

The use of  
duplicates.

Remedies  
under it.

The registered proprietor of a charge may take possession, and may enforce a foreclosure or sale of the land as in the case of a mortgage; and unless the power of sale is negatived, he may sell as if he were the registered proprietor of the land. And ss. 19, 20, 21 (except sub-ss. 1 and 4), 22, 23 and 24 of the Conveyancing Act, 1881, are made to apply to registered charges (*d*).

Charge with  
annuity.

Mortgage to  
building  
society or  
friendly  
society, &c.

A registered proprietor of land may, in the prescribed manner, charge it with an annuity or other periodical payment. He may also charge it in favour of a building society under the Building Societies Acts or of a friendly society, &c., by means of a mortgage made in pursuance of, or consistent with, the rules of the society, and the mortgage will be deemed a charge made in the prescribed manner and be registered accordingly (*e*).

Cessation of  
charge to be  
notified.

When a charge is satisfied, its cessation is to be notified in whole or in part, as the case may require, by an entry, on the register (*f*), and the terms of a charge may be altered (*g*).

The position  
of a chargee.

Probably a registered chargee obtains a charge on the statutory estate of the proprietor of the land, which would have priority to all unregistered estates and rights which were not protected by cautions or entries on the register, though no enactments, corresponding to those which define the position of a registered transferee of the land for value, apply to a chargee. The charge does not pass any estate in the land, though possibly, by virtue of the statutory power of entry, it may create an *interesse termini* (*h*).

Registered  
incumbrances.

Under rr. 175 to 177, incumbrances created before first registration can be registered, and the registered incumbrancer will, according to the practice of the office, have the same disposition should be taken in duplicate, for one part must be left at the Registry, and no note of the covenants is entered on the register.

(*d*) Act of 1875, ss. 25—27; Act of 1897, s. 9 (1), (2).

(*e*) Act of 1897, s. 9 (3); rr. 103, 121, 122, 167.

(*f*) Act of 1875, s. 28, as amended by Act of 1897, First Schedule; rr. 166, 167, 182; Forms 48, 50.

(*g*) Act of 1897, s. 9 (5); r. 165, Form 47.

(*h*) As to mortgages by a limited company, see r. 161.

powers of disposition as a registered chargee, but the legal estate or term should be protected by a restriction or by a notice under s. 50 of the Act of 1875. The registration of an incumbrance will give the proprietor power to transfer the land on the register : this is essential to the incumbrancer where the land is registered with an absolute title.

*Mortgage by deposit of Certificate.*

A registered proprietor may, subject to any registered estates, charges or rights, create a lien on the land or charge by deposit of the certificate, and such lien is equivalent to a lien created by the deposit of title deeds or of a mortgage deed of unregistered land by an owner entitled to the fee simple or the term for his own benefit or by a mortgagee beneficially entitled to the mortgage (*i*). The lien is subject to any unregistered interests protected by caution or other entry on the register, and in the case of good leasehold, qualified, or possessory titles to interests excepted from the effect of registration (*k*).

Mortgages by deposit.

This power is also extended to the case of certificates of incumbrances and sub-charges (*l*). And the power is exercisable by a tenant for life, subject to any restriction entered on the register (*m*). He ought not to be able to charge the settled land except for the purposes authorised by the S. L. Acts or by the settlement.

Notice of the deposit must be given to the registrar ; this will prevent a new certificate being issued : the notice operates as the lodgment of a caution under s. 53 of the Act of 1875. A notice of an intended deposit may also be given in the case of land about to be registered, and this will create a lien in like manner (*n*).

Notice.

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(*i*) Act of 1897, s. 8, last paragraph.

(*k*) R. 251.

(*l*) R. 181.

(*m*) Act of 1897, s. 6 (8).

(*n*) See rr. 243—251 as to deposits generally, and *cf. Fullerton v. Proc. Bk. of Ireland*, 1903, A. C. 309 ; 72 L. J. P. C. 79, a case where an unregistered equitable charge was postponed.

*Transfer of Registered Land.*

Transfer of  
land.

Every registered proprietor of freehold or leasehold land may transfer it in the prescribed manner, and the transfer is completed by the registrar entering on the register the transferee as proprietor of the land transferred (*o*). As a result of the transfer not taking effect till registration as regards the registered title, the practice, in the case of freeholds, has been to add the words "in fee simple," so that, assuming that the proprietor has power to convey the land apart from the Acts, the transfer may, until registration, take effect as a conveyance under s. 49 of the Act of 1875.

Effect of  
transfer for  
valuable con-  
sideration  
where title is  
absolute;

A transfer for valuable consideration of freehold land registered with an absolute title, when registered, confers on the transferee an estate in fee simple in the land transferred together with all rights, privileges and appurtenances (*p*) belonging or appurtenant thereto, subject to the incumbrances, if any, entered on the register, and subject also, unless the contrary is expressed on the register, to such liabilities, rights and interests as are by the Act declared not to be incumbrances (*q*), but free from all other estates and interests whatsoever. A transfer for valuable consideration of freehold or leasehold land registered with a qualified title has the same effect as in the case of land registered with an absolute title, save that it does not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted. A transfer for valuable consideration of freehold or leasehold land registered with a possessory title does not prejudice or affect the enforcement of any right or interest adverse to or in derogation of the title of the first registered proprietor, and subsisting or capable of arising at the time of the registration of such proprietor, but with this saving it has the same effect as a transfer of land registered with an

where  
qualified,

or possessory,

(*o*) Act of 1875, ss. 29, 34; rr. 126—157.

(*p*) See also as to appurtenances, r. 254.

(*q*) S. 18, as amended; rr. 215 and 255.

absolute title. A transfer for valuable consideration of land registered with a good leasehold title does not affect any right in derogation of the title of the lessor to grant the lease, but in other respects takes effect as if the land were registered with an absolute title. A transfer of freehold or leasehold land made without valuable consideration is subject to any unregistered estates, rights or equities subject to which the transferor held the same (*r*).

or good  
leasehold.

Effect of  
voluntary  
transfer.

A transfer of leasehold land implies (unless the implication be negated by an entry on the register) covenants by the transferor that the rent and covenants have been paid and observed, and by the transferee to pay and perform them in future and indemnify the transferor (*s*). And a transfer of freehold land subject to a rent-charge implies similar covenants (*t*).

Implied cove-  
nants on  
transfer of  
leaseholds, or  
of freeholds  
subject to a  
rent-charge.

### *Transfer of Charges.*

The registered proprietor of any charge or sub-charge may transfer it in the prescribed manner. The transfer is completed by the registrar entering on the register the transferee as proprietor of the charge transferred (*u*). Under r. 117 a priority notice of an intended transfer of a charge can be lodged. Where interest is in arrear at the date of the transfer this should be expressly assigned, and the form modified. A registered transferee for value of a registered charge will not be affected by any irregularity or invalidity in the original charge itself, of which the transferee was not aware when it was transferred to him (*x*).

Transfer of  
registered  
charge.

(*r*) Act of 1875, ss. 30—33, 35, 38; rr. 140, 141, and 142.

(*s*) Act of 1875, s. 39; r. 138.

(*t*) R. 132.

(*u*) Act of 1875, s. 40; r. 168; Form 49. As to transfer of sub-charge, see r. 179. As to the position of a registered transferee under a forged transfer, see *A.-G. v. Odell*, 1906, 2 Ch. 47; 75 L. J. Ch. 425.

(*x*) Act of 1897, First Schedule, amending s. 40 of the Act of 1875.

Forged  
transfer.

*Transmission of Land and Charges.*

On death.

On the death of a sole registered proprietor, or of the survivor of several joint proprietors, his personal representative or, with his assent, the devisee or legatee of the land or charge, will be registered as proprietor (*y*), except that where the deceased registered proprietor was tenant for life, it will be the duty of the trustees of the settlement to apply for the registration of his successor (*z*). Where a tenant by the curtesy succeeds he should be registered (*a*). This is the usual practice, though at present the Act of 1875 permits his estate to be registered as an incumbrance.

On bankruptcy, or liquidation of a company.

If a registered proprietor becomes bankrupt, the official receiver or the trustee will be registered in his place, on production of the bankruptcy order, with a certificate of the official receiver that the land or charge is part of the property of the bankrupt divisible among his creditors (*b*). On the liquidation of a company the order or resolution appointing the liquidator may be filed or referred to (*c*).

On marriage.

Provision is made for registering the husband as co-proprietor with his wife, as regards property of the wife not her separate property, under the M. W. P. Acts or otherwise (*d*).

*Land Certificates and Certificates of Charge.*

Land certificate, &c. to be delivered or deposited on registration.

On the first registration of freehold or leasehold land, a land certificate, and on the registration of a charge a certificate of charge or sub-charge, is either to be delivered to the registered proprietor or deposited in the registry, as the proprietor may

(*y*) Act of 1875, ss. 41, 42 ; rr. 183—192, see also r. 104.

(*z*) Act of 1897, s. 6 (4).

(*a*) S. L. Act, 1882, s. 58 (viii.); Act of 1897, s. 6 (1), (10). See, however, Act of 1875, s. 52 ; r. 207.

(*b*) Act of 1875, s. 43 ; rr. 193—199.

(*c*) R. 200.

(*d*) Act of 1875, s. 44, as amended by the Act of 1897, First Schedule.

prefer. If deposited, it is to be officially indorsed from time to time with notes of all subsequent entries on the register affecting the land or charge. The registered proprietor may at any time apply for the delivery of the certificate to himself or such person as he may direct, and may at any time again deposit it in the registry. All this is to be done without cost to the proprietor (*e*). A certificate may be left at the registry for a specified purpose only (*f*).

The certificate, if outstanding, must be produced to the registrar on every entry on the register of a disposition of the land or charge to which it relates, and on every registered transmission, and a note of every such entry, &c., is to be officially indorsed on the certificate (*g*). But when notice of a lease is registered against a title it seems that the land certificate need not be produced.

To be officially indorsed with notes of subsequent entries on register.

Certificates may be deposited for creating a lien as in the case of title deeds, and notice of an intended deposit before the certificate is issued will have the same effect (*h*). If a land certificate is to be deposited by way of charge, then the chargee will not be given a certificate of charge in the full form (*i*).

Deposit of certificate by way of mortgage.

On the completion of a purchase, the vendor must deliver the certificate to the purchaser, or, if a part only of the land comprised in it is sold, he must, at his own expense, produce it or procure its production for the completion of the purchaser's registration (*k*).

To be delivered to purchaser on completion or produced if it comprises other land.

Provision is made for obtaining a new certificate if the original one is lost or destroyed (*l*).

As to lost certificates.

(*e*) Act of 1875, ss. 10, 22; Act of 1897, s. 8, clauses numbered (i.), (ii.), (iii.), (iv.), following sub-s. 4; rr. 181, 243—251. By r. 65, the provisions in the Acts as to land certificates are extended to leasehold land.

(*f*) R. 268.

(*g*) Act of 1897, s. 8 (1); r. 267.

(*h*) Act of 1897, s. 8, last paragraph; rr. 181, 243—251; *cf.* *Fullerton v. Prov. Bk. of Ireland*, 1903, A. C. 309; 72 L. J. P. C. 79, an Irish case, where an unregistered equitable charge was postponed.

(*i*) R. 259B.

(*k*) Sub-s. 2.

(*l*) Sub-s. 3; r. 263.

On sale by chargee, land certificate need not be produced.

Chargee not entitled to custody of land certificate.

When a transfer is made by the registered proprietor of a charge under the power of sale, or the charge is foreclosed (*m*), a new land certificate may be issued without production of the former land certificate, but the certificate of charge must be produced or accounted for. Subject to any stipulation to the contrary, the proprietor of a registered charge is not entitled to have the custody of the land certificate (*n*). Where a purchaser claims by a title paramount (*o*) to the registered title, the production of the land certificate may be dispensed with (*p*). The practice hitherto has been for first mortgagees to stipulate for the custody of the land certificate; this is particularly desirable where further advances are to be made (*q*). This practice is not likely to be stopped merely because the chargee will not obtain a charge certificate in the full form (*r*); all the necessary information is given in the land certificate.

#### *Unregistered Dealings with Registered Land.*

Unregistered dispositions of interests in registered land.

Subject to the maintenance of the estate and right of the registered proprietor, any person, whether the registered proprietor or not, having a sufficient interest in registered land, may by unregistered dispositions create estates, rights, interests and equities in the same manner as if the land were not registered, and any person entitled to an unregistered estate or interest may protect the same by notices, cautions, inhibitions, restrictions, &c. (*s*). A legal estate may be conveyed by an unregistered conveyance, but it is liable to be defeated by a

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(*m*) Rr. 164, 263.

(*n*) Act of 1897, s. 8 (4); rr. 164, 263; the rules relating to certificates are 143, 243—251, 258—268.

(*o*) Rr. 151, 174.

(*p*) R. 152, and see r. 263.

(*q*) Act of 1897, s. 8 (3), (4); *ib.*, last par.; rr. 152, 164, 263; Act of 1897, s. 12, and rr. 151, 341, as to giving effect to a title acquired by the mortgagee under the Statutes of Limitation.

(*r*) R. 259b.

(*s*) Act of 1875, s. 49, as amended; *c/f.* Act of 1897, s. 6 (8), and see rr. 201, 226—251.

registered transfer for value unless protected by restriction, &c., on the register (*t*).

*Notices, Cautions, &c.*

Any person interested under a lease, or agreement for a lease, also any person entitled to an estate in dower, or by the curtesy, may have a notice of it entered on the register (*u*). The notice under s. 50 may be in respect of a mortgage term (*x*).

Notice of leases may be entered in register.

Any person interested under any unregistered instrument, or interested as a judgment creditor or otherwise in any registered land or charge, may lodge a caution with the registrar to the effect that no dealing with the land or charge be had on the part of the registered proprietor until notice has been served on the cautioner (*y*).

Cautions may be lodged by persons interested under unregistered dispositions.

The Court or, subject to an appeal to the Court, the registrar, upon the application of any person interested, may inhibit any dealing with registered land (*z*).

Power of Court or registrar to inhibit registered dealings.

Where the registered proprietor of land desires to place restrictions against transferring or charging such land, or against transferring a charge, he may apply to the registrar to make an entry in the register that no transfer or charge shall be made unless the following things or some or one of them are done: (namely) unless notice of an application for a transfer or for the creation of a charge is transmitted by post to such address as he shall specify to the registrar, or unless the consent of some specified person be given, or unless such other matter or thing is done as may be required by the applicant and approved by the registrar (*a*).

Restrictions may be placed on transfer by registered owner.

(*t*) *Capital and Counties Bk. v. Rhodes*, 1903, 1 Ch. 631; 73 L. J. Ch. 336; see *A.-G. v. Odell*, 1906, 2 Ch. 47; 75 L. J. Ch. 425.

(*u*) Act of 1875, ss. 50–52, as amended; but see as to curtesy, S. L. Act, 1882, s. 58 (viii.); Act of 1897, s. 6 (1), (10), also rr. 7, 63, 64, 201.

(*x*) R. 202; Fee Order, 1908, par. E.

(*y*) Act of 1875, ss. 53–56; rr. 226–233.

(*z*) Act of 1875, s. 57; rr. 80, 234–237, 241.

(*a*) Act of 1875, ss. 58, 59, as amended by the Act of 1897, rr. 80, 240, 241. As to when restrictions are not required in the case of land held for charitable purposes, see *Re Wesleyan Methodist Chapel, &c., Wandsworth*, 1909, 1 Ch. 454; 78 L. J. Ch. 414.

*Miscellaneous Provisions.*

Cautions  
against regis-  
tration.

The Acts enable any person interested in unregistered land to lodge a caution against its registration, or against registration with a good leasehold, qualified or absolute title, without notice to him (*b*). A caution against registration is frequently lodged by a mortgagee of unregistered land to prevent the owner of the equity of redemption from registering his title without notice to the mortgagee. The caution is essential in those cases where the registration of the mortgagor would in effect divest the mortgagee of his legal estate.

Priority  
notices.

A person entitled to apply for first registration may lodge a priority notice and thus secure priority for an intended application (*c*). This is the best method for protecting a contract for the purchase of land liable to be registered under the compulsory provisions. Under r. 117 a similar notice may be given in the case of registered land subject to the requirements of the rule.

Trustees and  
others may  
authorise  
purchaser  
to apply for  
registration.

Any trustee, mortgagee, or other person having a power of selling land may authorise a purchaser to make an application to be registered as first proprietor, and may consent to the performance of the contract being conditional on his being so registered, and may himself apply for registration and charge the expenses to the trust (*d*).

Concurrent or  
successive  
ownership.

Any two or more persons entitled for their own benefit concurrently or successively to land may be registered as joint proprietors, in the same manner and with the same incidents in and with which it is by the Act declared that any individual proprietor may be registered. And undivided shares in land may be registered (*e*).

Production of  
deeds, &c., to  
registrar.

All instruments and facts required for the purposes of registration must be disclosed to the registrar, whatever title is to

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(*b*) Act of 1875, ss. 60—64; rr. 88—94, 226.

(*c*) R. 95, varying r. 111.

(*d*) Act of 1875, s. 68; *cf.* Act of 1897, s. 6.

(*e*) Act of 1875, s. 69; Act of 1897, s. 14 (1).

be registered (*f*). Persons holding deeds liable to be produced can be required to produce them, and the registrar may stamp or mark deeds relating to registered land so as to give notice to any purchaser or other person dealing with the land of the fact of the registration (*g*). In the case of registration with a possessory title the registrar may act on a statutory declaration as to the sufficiency of the documents produced, and as to dispensing with their production in special circumstance (*h*). In special cases of registration with an absolute title the investigation of title will be modified (*i*).

Incumbrances will now be entered either expressly or by reference on the register, whatever title is registered (*k*). Incumbrances.

The registrar may register the proprietor of any advowson rent, tithes impropriate, or other incorporeal hereditaments of freehold tenure, also the proprietor of any mines or minerals, where the same have been severed from the land. He may also register any fee farm grant, with the particulars of the rent, services, conditions, &c. (*l*). Registration of title to incorporeal hereditaments.

Neither the registrar nor any person dealing with registered land or a charge will be affected with notice of any trust (express, implied, or constructive), and references to trusts are to be excluded from the register as far as possible (*m*). No notice to be taken of trusts.

Upon the registration of two or more persons as proprietors of the same land or of the same charge, an entry may be made to the effect that when the number of such proprietors is reduced below a certain specified number no registered disposition shall be made except under the order of the Court or of the registrar Entry to prevent dealings when number of co-proprietors reduced below a certain number.

(*f*) R. 19.

(*g*) Act of 1875, ss. 70—72, 109, 110; rr. 44, 46, 332.

(*h*) Act of 1897, First Schedule; rr. 44, 46.

(*i*) Rr. 24, 27. As to advertisements of intended registration, see rr. 28—30.

(*k*) R. 43.

(*l*) Act of 1875, s. 82, as amended; Act of 1897, ss. 15 and 24 (1); rr. 71—77.

(*m*) Act of 1897, First Schedule, replacing s. 83 (1). As to notices of leases and other liabilities, see rr. 63, 201 *et seq.*

after inquiry into the title, subject to an appeal to the Court. And subject to general rules, an entry to the above effect is required to be made, unless it is shown to the satisfaction of the registrar that the joint proprietors are entitled for their own benefit (*u*). But the entry will not be made where, as will usually be the case, the sole surviving proprietor would have power, off the register, to dispose of the land (*v*), unless the registrar for special reason considers the entry to be desirable.

Husband and wife co-proprietors.

On any dealing with land registered in the names of husband and wife as co-proprietors, the wife, not being entitled for her separate use, must be examined in the prescribed manner (*p*).

Stamps.

The registrar must see that all stamp duties have been paid. This will now apply to increment value duty where leviable as a stamp duty. Where a deed off the register is used, this will carry the stamp, and must be produced to the registrar (*q*).

Restrictive conditions may be registered

Conditions restrictive of building or user or any other restrictive conditions capable of affecting assigns by way of notice may be registered or annexed to land on registration or transfer or at any other time (*r*). But there must be a valid restrictive covenant as well; the mere registration of a restriction is not sufficient (*s*).

Inspection of register.

Subject to such regulations and exceptions as may be fixed by general rules, any registered proprietor of any land or charge, and any person authorised by any such proprietor, or by an order of the Court, or by general rule, but no other person, may inspect and make copies of and extracts from any register or document in the custody of the registrar (*t*).

Penalty on unqualified persons preparing instruments.

The Act of 1897 imposes a penalty on unqualified persons drawing prescribed instruments (*u*).

(*u*) Act of 1875, s. 83 (3); Act of 1897, First Schedule.

(*v*) Rr. 224, 225; Trustee Act, 1893, ss. 20 and 22; *c.f.* S. L. Act, 1882, s. 39.

(*p*) Act of 1875, s. 83 (4), as amended; rr. 338—340.

(*q*) *Ib.*, sub-s. 7; rr. 123—125.

(*r*) Act of 1875, s. 84, as amended; rr. 3, 7, 223; and Form 41.

(*s*) *Willé v. St. John*, 1910, 1 Ch. 325; 79 L. J. Ch. 239.

(*t*) Act of 1875, s. 104; Act of 1897, ss. 6 (6), 22 (7); rr. 14, 284—295.

(*u*) Act of 1897, s. 10.

*As to Title by Adverse Possession.*

A title adverse to, or in derogation of, the title of a registered proprietor will not be acquired by any length of possession; but a person who, but for this provision, might have obtained a title by possession to registered land may apply for an order for rectification of the register (*x*).

Adverse possession gives no title, until register is rectified.

*Removal of Land from Register.*

The registered proprietor of land, not situated in a district where registration of title is compulsory, may, with the consent of the other persons interested therein, remove the land from the register (*y*).

Land may be removed from register except in district where registration is compulsory.

*Compulsory Registration.*

Under a power conferred by s. 20 of the Act of 1897, and certain Orders in Council made in pursuance thereof, registration of title to land has been made compulsory on sale in the county of London since the respective days following, namely:—

Registration compulsory in county of London.

|   |                              |
|---|------------------------------|
| The parishes of Hampstead, Saint Pancras, Saint Marylebone, and St. George's, Hanover Square . . .  | 1st January, 1899.           |
| The parishes of Shoreditch, Bethnal Green, Mile End Old Town, Wapping, Saint George's-in-the-East, Shadwell, Ratcliff, Limehouse, Bow, Bromley, and Poplar . . .  | 1st March, 1899.             |
| The remainder of the county (not including the City of London) north of the centre line of the River Thames except North Woolwich . . .   | 1st October, 1899.           |
| The parishes of Christ Church, Southwark, Saint George the Martyr, Camberwell, Horselydown, Lambeth, Bermondsey, Newington, Rotherhithe, Saint Olave and Saint Thomas, Saint Saviour, and the detached part of the parish of Streatham situate between the parishes of Lambeth and Camberwell . . . | 1st January, 1900.           |
| The parishes of Battersea, Clapham, Putney, Tooting Graveney, Wandsworth, and the remainder of the parish of Streatham . . .  | 1st May, 1900.               |
| The remainder of the county except the City of London . . .   | 1st November, 1900.          |
| The City of London . . .  | 1st July, 1902 ( <i>z</i> ). |

(*x*) Act of 1897, s. 12; and see rr. 151, 174.

(*y*) *Ib.*, s. 17; r. 295.

(*z*) There is a difficulty as to this date. The Order of 10th December, 1901,

The dates when these Orders took effect are still important when investigating title, because it is necessary to see that registration followed a sale in order to obtain the legal estate.

Effect of  
Orders.

The effect of the Orders is, that on a conveyance on sale executed on or since the prescribed day the purchaser does not acquire the legal estate, unless or until he is registered as proprietor. And this applies not only to freehold land, but also to an assignment on sale of a lease or underlease having at least forty years to run, or two lives yet to fall in, and a grant of a lease or underlease for a term of forty years or more, or for two or more lives, and until registration such assignment or grant will operate only as an agreement (*a*).

extends to  
leaseholds.

Meaning of  
"conveyance  
on sale."

The expression "conveyance on sale" means an instrument executed on sale, by virtue whereof there is conferred or completed a title under which an application for registration may be made under the Act, and the expressions "assignment" and "grant of lease or underlease" apply to any instrument by virtue whereof there is conferred or completed a title under which an application for registration as first proprietor of leasehold land may be made, not being an assignment or surrender to the owner of the immediate reversion executed after 1898, and containing a declaration that the term is to merge (*b*).

No order for compulsory registration as regards any other county or part of a county can be made, except in pursuance of a resolution of the county council of such county (*c*).

Registration  
of incorporeal

Registration of title to incorporeal hereditaments, to undivided

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postponed the compulsory provisions in regard to the City to 1st March, 1902, so that before the Order of 6th March, 1902, came into force, the compulsory provisions had been applicable since 1st March. However, notice of the intention to apply for the Order of 6th March had been previously given (*W. N.* (1902) p. 71, notes), so that the Order may perhaps take effect retrospectively.

(*a*) Act of 1897, s. 20; rr. 68, 69.

(*b*) Act of 1897, s. 20 (2); r. 70.

(*c*) *Ib.*, s. 20.

shares, to mines or minerals apart from the surface, or to certain other interests is not compulsory (*d*), and the L. T. Acts do not apply to copyholds (*e*). hereditaments not compulsory.

By the Small Holdings and Allotments Act, 1908, s. 13, where a county council acquire land for small holdings, they must be registered as proprietors under the L. T. Acts. A purchaser from them is registered with an absolute title subject to any incumbrances created under the Act of 1908. Special rules may be made under this section. As regards England the Act of 1908 replaces the Act of 1892. Under Small Holdings and Allotments Act.

## II.

Next to consider the effect of registration on conveyancing practice under the following heads: (1) Contracts for sale, abstracts and searches; (2) Assurances on sale and matters relating to the completion of a purchase; (3) Mortgages and charges; and (4) Other matters.

### 1. *Contracts for Sale, Abstracts and Searches.*

The Act of 1897, s. 16, provides as follows:—

(1) A purchaser of registered land shall not require any evidence of title, except—

What evidence of title can be required.

(i.) the evidence to be obtained from an inspection of the register or of a certified copy of, or extract from, the register;

(ii.) a statutory declaration as to the existence or otherwise of matters which are declared by section eighteen of the principal Act and by this Act not to be incumbrances;

(iii.) if the proprietor of the land is registered with an absolute title, and there are incumbrances entered on the register as subsisting at the first registration of the land, either evidence of the title to those incumbrances, or evidence of their discharge from the register;

(iv.) where the proprietor of the land is registered with a qualified title, the same evidence as above provided in the case of absolute

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(*d*) Act of 1897, s. 24.

(*e*) Act of 1875, s. 2. A note is made on the register if there is a doubt whether the land is copyhold: r. 87.

title, and such evidence as to any estate, right or interest excluded from the effect of the registration as a purchaser would be entitled to if the land were unregistered;

- (v.) if the land is registered with a possessory title, such evidence of the title subsisting or capable of arising at the first registration of the land as the purchaser would be entitled to if the land were unregistered.

What evidence required where registration is with absolute title.

Where the title is registered as absolute, the abstract of title will consist of a copy of the land certificate or of the entries on the register affecting the land, to be verified by the production of the certificate itself and the inspection of the register. If the certificate refers to other documents, those documents should be abstracted and produced. A "good leasehold title" is in effect an absolute title, though it gives no guarantee that the lease is well created.

Where possessory title only,

Where the registration is with a possessory title only, the abstract must, in the absence of stipulation to the contrary, carry the title back forty years, or to the lease, and comprise all the documents affecting the land up to the date of the first registration. If the title registered is qualified, the abstract must account for the estates and interests excluded from the effect of registration.

or qualified title.

Vendor bound to prove the non-existence of liabilities declared not to be incumbrances by s. 18.

As all the liabilities, rights and interests, declared not to be incumbrances within the meaning of the Acts (except land tax and tithe rent-charge) are nevertheless incumbrances as between vendor and purchaser, the vendor is bound, in the absence of a stipulation to the contrary, to furnish evidence that no such liabilities exist. A statutory declaration to that effect is made sufficient evidence by the above enactment. If any such liabilities, &c., are known to exist, they should be mentioned in the contract, and an abstract of the instruments (if any) creating them, or such other evidence with respect to them as the vendor has, should be produced to the purchaser.

Purchaser may lodge priority notice.

After entering into a contract for the purchase of registered land the purchaser may, under r. 117, arrange with the vendor to lodge a priority notice. In the case of land in a compulsory

district about to be registered, the purchaser may, before completion, lodge a priority notice under r. 95, so that there may be no hitch when he applies for registration.

Before completion the purchaser should either himself inspect the register, or apply to the registrar to make an official search, in order to ascertain that the land certificate comprises all the entries in the register, and that there are no notices, cautions, restrictions, or inhibitions, other than those (if any) mentioned in the certificate, entered up against the land. The search should, unless a priority notice has been lodged, be postponed until the last moment, so as to prevent, as far as possible, any entries being made between the search and the time of completion (*f*).

Purchaser should inspect register, or apply for official search before completion.

Where a caution or inhibition is disclosed, the purchaser should require it to be removed before completion, unless the cautioner joins in the transfer (*g*). If there is a restriction, its terms must be complied with.

Where caution, &c. disclosed.

Where land in Middlesex or Yorkshire has been registered with an absolute or good leasehold title, no search need be made in the county registry; but if the registration is with a possessory or qualified title, a search should be made for the period not covered by the registration (*h*), or back to the last purchase if that is considered sufficient.

Searches in Middlesex or Yorkshire registries.

The searches usually made in the case of unregistered land in the Land Registry Office under the Land Charges, &c., Acts, and in the Bankruptcy Court respectively (*i*), are unnecessary in the case of registered land where the registration is with an absolute title. Nor is it the practice to make any such searches in the case of land registered with a possessory or qualified title if the vendor was himself a purchaser for value from a former registered proprietor. If the vendor was the first registered

Searches in Central Office or under Land Charges Act, or in Bankruptcy Court.

(*f*) As to searches generally, see rr. 284–295.

(*g*) R. 106.

(*h*) Act of 1875, s. 127, as amended.

(*i*) As to bankruptcies, see Act of 1875, s. 43, as amended.

proprietor, or derived his title otherwise than as a purchaser for value from the first registered proprietor, searches should be made against him as in the case of unregistered land, but no notice need be taken of any incumbrances which may be found on such search, unless they have priority to the estate conferred by first registration.

Searches for local charges.

The same observation applies to searches in the registers of charges kept by local authorities in respect of local improvements.

Inquiries of tenants and occupiers.

The usual inquiries should be made of the tenant or occupier as to the nature and terms of his tenancy as in the case of unregistered land.

As to succession duty and estate duty.

Having regard to s. 13 of the Act of 1897, a purchaser need make no inquiry about succession duty or estate duty unless the liability to such duty is noted on the register, or unless, in the case of a possessory title, the liability was subsisting or capable of arising at the date of the original registration, or, in the case of a qualified title, was included in the exceptions made on the original registration (*k*).

Index maps, &c.

In the case of land about to be registered, a private or official search of the Index Map, General Map, and parcels book and list of pending applications should be made (*l*).

Whether inspection of former instruments can be required to ascertain whether they contain or imply covenants for title.

As regards land registered with a possessory title, where A., the first registered proprietor, has sold and transferred the land to B., who is now selling to C., it is apprehended that C. will be entitled to inspect at the registry the instrument of transfer from A. to B., in order to see that it contains apt words to imply the statutory covenants for title, or, if such covenants have been entered into by a duplicate or separate deed in the possession or power of the vendor, to see such deed and have it handed over to him on completion (*m*).

Registration before conveyance undesirable.

The Act of 1875, s. 5, enables a purchaser to register with the

(*k*) Act of 1875, ss. 30—32; rr. 208—211.

(*l*) Rr. 12—14, 269c, 283.

(*m*) R. 284.

consent of the vendor before taking a conveyance. In the case of a possessory title this is undesirable, as the proprietor must be able to furnish an abstract of title to the interests paramount to the estate conferred by first registration. By omitting to take a conveyance, the legal estate would be left outstanding, and the contract for sale would become part of the title.

*2. Assurances on Sale, and Matters relating to the  
Completion of a Purchase.*

On the completion of the purchase the vendor must execute an instrument of transfer in the Form No. 20 in the First Schedule to the Rules or in such one of the subsequent forms as may be applicable to the case, in order to enable the purchaser to be registered as proprietor in his place.

Instrument of transfer.

The prescribed form does not contain a receipt for the purchase-money either in the body of the deed or indorsed on it. Consequently s. 56 of the Conv. Act, 1881, providing that such a receipt shall be a sufficient authority for the payment of the purchase-money to the solicitor producing the deed, does not apply. This defect may be remedied by adding a receipt either in the body of the deed or in a memorandum written at the foot of it.

Prescribed form contains no receipt for consideration.

Again, though r. 99 allows the addition of words implying the statutory covenants for title, it seems, having regard to s. 16 (3) of the Act of 1897, that the covenants so implied will not cover liabilities, rights and interests which, by s. 18 of the Act of 1875, as amended by the Act of 1897, are declared not to be incumbrances. This also may be met by adding a few words to the form, though where there is a conveyance operating under s. 49 of the Act of 1875 it seems that s. 16 (3) ought not to apply.

Implied covenants for title do not cover liabilities declared not to be incumbrances.

The transfer confers on the transferee the fee simple *when registered, i.e.*, when it has been completed by the registrar entering in the register the transferee as proprietor. Before this can be done, the transfer must be delivered by post or

Transfer does not pass fee simple until registration complete.

Proceedings necessary to

obtain registration.

otherwise at the registry with the proper Inland Revenue (including, it is conceived, the increment value duty stamp) and Land Registry fee stamps affixed thereto or impressed thereon, and accompanied by the land certificate (*n*). Notice of the delivery will be sent to the vendor at his registered address, and, unless the execution is admitted by him, the registration will not be completed until after the expiration of three clear days from the posting of the notice (*o*). The instrument of transfer will be retained at the office (*p*). On this account a duplicate is frequently taken.

"In fee simple" should be added to prescribed form.

In the meantime and until the registration has been completed, the transfer (if in the Form No. 20 as it stands) will have passed to the transferee an estate for life only, there being no apt words to carry the fee simple. A purchaser of freeholds cannot be expected to pay the purchase-money, so as to lose all control over it, until he has acquired the fee simple either on or off the register; hence it has become the practice to add the words "in fee simple" after the name of the transferee in the prescribed form.

Land certificate should be delivered to purchaser.

On the completion of the purchase the vendor should hand over the land certificate to the purchaser, and the latter should, unless protected by a priority notice, *at once* deliver the instrument of transfer and the land certificate to the registrar for registration. By taking possession of the land certificate immediately after the payment of the purchase-money, and delivering it at once at the office with the transfer, the purchaser prevents risk of the registration of adverse interests, except cautions and notices of leases, between the execution of the instrument of transfer and its registration.

Its possession a certain protection.

The Act of 1897, s. 8 (2), provides that if only a part of the land comprised in the land certificate is sold, the vendor must at his own expense produce it, or procure its production, to the

Duty of vendor where land certificate relates to other land also.

(*n*) Rr. 111—113.

(*o*) Rr. 118, 322.

(*p*) R. 119.

registrar for the purpose of completing the registration; and that if it is lost, he must pay the cost of the proceedings required to enable the registrar to proceed without it.

If, in accordance with this section, the vendor retains the land certificate, the purchaser will lose the protection afforded by the possession of it. It is therefore recommended that whenever the original land certificate relates to land sold in lots, or to land retained by the vendor as well as to the land sold, there should be a joint application under r. 157, before completion, to obtain a provisional registration of each purchaser (*q*).

Provisional registration on sales in lots.

Forms 22, 25, and 27 may now be relied on as conveyances of freeholds to the uses or of leaseholds on the trusts of a settlement, though a few words added may improve the forms. The rules now authorise leaseholds to be transferred to the tenant for life instead of to the trustees of the settlement (*r*).

Conveyances to the uses or on the trusts of a settlement.

Where the land purchased is to be held upon trust for sale, the trustees must be registered as proprietors, and there must be a separate declaration of trust. If necessary, the interests of the beneficiaries may be protected by restrictions and cautions entered on the register (*s*).

Plan to be adopted where land is to be held on trust for sale.

Where freeholds and copyholds are sold together, there should be, first, a deed of conveyance of the freeholds and covenant to surrender the copyholds in the usual form, and, secondly, an instrument of transfer as to the freeholds. The deed of conveyance will bear the *ad valorem* and increment value stamp for the freeholds, and the instrument of transfer will require no stamp (*t*).

Plan to be adopted where freeholds and copyholds are sold together.

### 3. *Mortgages and Charges.*

The Acts enable a registered proprietor to charge the land with the payment of money, and they confer on the chargee the

Rights conferred on chargee

(*q*) As to the provisional registration of charges, see r. 174.

(*r*) S. L. Act, 1882, s. 24; rr. 69, 128; Forms 22 and 27.

(*s*) Form 8.

(*t*) R. 123.

right to enter into possession or receipt of the rents and profits, the right to enforce foreclosure (*u*) or sale as if he were a mortgagee, and the powers conferred by s. 19 of the Conv. Act, viz., to sell, to insure against fire, to appoint a receiver, and, when in possession, to cut timber (*v*).

Position of  
a chargee  
taking  
possession.

If the chargee takes possession, it is apprehended that he will acquire a chattel interest similar to that of a judgment creditor under an *elegit*, but it is, perhaps, doubtful whether s. 25 of the Act of 1875 will enable him to distrain for rent and enforce any covenant or condition contained in a lease subsisting at the time when possession is taken (*y*). He will, it seems, have the power of leasing conferred by the Conv. Act, 1881 (*z*).

Legal estate  
does not pass  
by the charge,  
and as to  
title by  
possession.

A chargee does not by virtue of the charge get the legal estate, but he has power to dispose of it under his power of sale (*a*), and may, after he would have acquired a title under the Statutes of Limitation if the land had been unregistered, apply for rectification (*b*). No provision has been made, in the case of rectification, for the grant of a new land certificate (*c*).

Suggestion  
that conveyance  
of legal estate be  
added to  
charge not  
adopted.

It has been suggested that the instrument of charge should contain, besides the charge itself, a conveyance of the land to the chargee, subject to redemption, so as to give him the legal estate. But as such a conveyance would merely take effect (*d*) as a disposition off the register, and might at any time be defeated by a registered transfer for value (*e*), it confers no real advantage. Moreover, it is more convenient for the mortgagee to have the custody of the deed passing the legal estate, and it

(*u*) See *Weymouth v. Davis*, 1908, 2 Ch. 169; 77 L. J. Ch. 585.

(*v*) Act of 1875, ss. 22—28; Act of 1897, s. 9.

(*y*) See Conv. Act, 1881, s. 11. At any rate, there is a question whether, in the case of a possessory title, the chargee could eject a trespasser without showing that he had the legal estate: *Allen v. Woods* (1893), 68 L. T. 143.

(*z*) Conv. Act, 1881, ss. 2 (vi.), 18.

(*a*) Act of 1875, s. 27.

(*b*) Act of 1897, s. 12.

(*c*) Rr. 152, 164, 263.

(*d*) Act of 1875, s. 49.

(*e*) Act of 1875, ss. 30—32.

seems contrary to the principle of the Acts that a dealing taking effect off the register should appear on the face of a registered charge. The plan is therefore not recommended, except where a duplicate is taken of the registered charge.

Except where duplicate is taken.

If the proposed security comprises other property besides registered land, so that a mortgage deed is necessary, as regards that other property, it will generally be found convenient to have (1) a mortgage deed in the ordinary form comprising the registered land as well as the other property, and (2) an instrument of charge for the purpose of completing the transaction on the register, so far as regards the registered land. The mortgage deed will bear the *ad valorem* stamp, and the charge will require no stamp.

Course to be taken where unregistered land included in security.

Sometimes, *e.g.*, where there is a trust deed to secure debentures, the lenders may be advised to require a security in the ordinary form accompanied by an absolute transfer of the freehold land instead of an instrument of charge, so as to enable them to be registered as proprietors. This somewhat dislocates the working of the register. The advantage, however, to the mortgagees would be that they could obtain a title to the land under the Statutes of Limitation without applying for rectification (*f*). A question has been raised at the Land Registry whether a transfer for giving effect to a duly stamped mortgage does not bear a stamp not exceeding 10s., but under r. 123 the transfer should be free from duty. There is no difference in principle between the registration of a charge or a transfer; the proprietor in either case acquires the right to transfer the land on the register. No doubt *ad valorem* fees are payable on the registration of the transfer in the same way as in the case of a charge. The mortgagor can protect his right of redemption by a caution; the mortgagee would object to a restriction.

Sometimes absolute transfer to mortgagee desirable.

Mortgages by deposit have been dealt with in the first part of this dissertation.

The practice in the case of flats, music-halls, hotels, and other like property where the mortgagee requires special provisions for

Practice in regard to mortgages of flats and other

(*f*) Act of 1897, s. 12.

special classes  
of property.

his protection, and in particular requires to be in a position, when he desires to take possession, to oust the tenants as trespassers, is not to rely exclusively on a registered charge, but to take, in addition, a conveyance, in the case of freeholds, of the legal estate which is protected by a restriction, and a sub-demise, in the case of leaseholds, of a mortgage term which is protected by notice under s. 50 of the Act of 1875 (*g*).

Deed off the  
register where  
necessary.

The conveyance or sub-demise, with all the special provisions, may be inserted in the charge when a duplicate is taken, but is best effected by a separate deed off the register, and this should always be done where the registered charge is effected under r. 96 of land in a compulsory area about to be registered; for in that case the form of the charge shows that the land has not been registered at the date of the charge, and accordingly that the mortgagor has not acquired the legal estate or term.

Restriction or  
notice to  
protect legal  
estate or term.

If the usual form of restriction now in use for protecting the legal estate of a mortgagee be adopted, this will not prevent subsequent charges from being registered, but will prevent the proprietor of the land or a subsequent chargee from disposing of the land for value on the register without the consent of the mortgagee. When the mortgagee consents to the registration of such a disposition, he must make arrangements to get back the legal estate directly after the registration of the transfer and to continue the restriction against the new proprietor.

It is the effect of the overriding statutory power of disposition given to the registered proprietor (Act of 1875, s. 30), and also to the proprietor of a charge under s. 27 of the Act of 1875, which renders the restriction necessary.

A notice of the mortgage term under s. 50 works well, for every registered disposition, whether for value or not, will, so long as the notice is on the register, take effect, subject to the mortgage term so protected. In fact, this notice works so well

(*g*) The possession of the legal estate or term may, in the case of a possessory title, protect the mortgagee against undisclosed equities: *Capital and Counties Bk. v. Rhodes*, 1903, 1 Ch. 631; 73 L. J. Ch. 336.

that it is possible that mortgages by means of long terms may again come into vogue.

Even assuming that the deposit of the land certificate with the mortgagee would prevent a disposition from being registered which would defeat the legal estate of the mortgagee, this method cannot be adopted without preventing the registration of subsequent charges. For if the mortgagee produces the certificate and permits a subsequent charge to be registered, the subsequent chargee will, under his power of sale, be able to defeat the legal estate of the first mortgagee.

Why deposit of land certificate cannot be used to protect legal mortgage.

Where a charge contains a grant of a sub-term the registrar will, when entering the charge on the register, add the words "with ancillary sub-term." The result seems to be the same as if notice of the term were registered under s. 50. The term takes effect under s. 49 in the same way as if created by a deed off the register; in fact, the only way to pass the registered freehold or leasehold land *on the register* is by a registered transfer. Subject to this, it seems that the registration of a charge operates as a registration of the contents of the charge, and now a copy of each registered charge is bound up with the land certificate.

Effect of registration of a charge "with ancillary sub-term."

Where freeholds in a compulsory area, but not yet registered, are purchased, and part of the purchase-money is to be raised by mortgage, then, if the vendor is owner in fee simple or the legal estate is outstanding, registration may be evaded or postponed by adopting the following plan:—

Purchases and mortgages of freehold land in a compulsory area effected concurrently.

1. If the legal estate is vested in the vendor, he should by a voluntary conveyance (*h*), dated the day before the conveyance to the purchaser, convey the legal estate unto and to the use of a trustee (nominated by the intending mortgagee) in fee simple in trust for the vendor in fee simple. The vendor will then convey the equitable fee simple to the purchaser, and the recitals will show that the legal estate is outstanding in the trustee. The

Where vendor is seized in fee or the legal estate is outstanding, registration of title to be evaded.

(*h*) As no beneficial interest passes, the stamp would only be 10s., see Fin. (1909-10) Act, 1910, s. 74 (6).

purchaser can then mortgage the land in common form, the trustee joining to convey the legal estate.

Thus, as the purchaser never gets the legal estate, the compulsory provisions of s. 20 of the L. T. Act, 1897, cannot affect him. Only when he takes a reconveyance will he be bound to register.

It is desirable that the mortgage should contain a covenant by the mortgagor not to register without the consent of the mortgagee, for if the equity of redemption is registered, then when the mortgagee sells under his power of sale he will (i) have to proceed under rr. 151 and 152.

2. If the legal estate is outstanding, then this must be got in by the mortgage, and not by the conveyance to the purchaser.

3. If the vendor is himself to advance the money and the legal estate is vested in him, then nothing is wanted beyond the ordinary conveyance (which will leave the legal estate in the vendor, because the purchaser does not register), followed by a mortgage.

In this case it is essential that the purchaser should covenant in the mortgage not to register, and that a caution against registration should be lodged, for the registration of the purchaser as proprietor would divest the mortgagee of his legal estate.

Cases where registration of title cannot be evaded.

Where a vendor is selling as tenant for life under the S. L. Acts, or as a mortgagee under a power of sale, or as a trustee holding on trust for sale, and the legal estate is not outstanding, s. 20 of the L. T. Act, 1897, cannot be evaded. If in such a case part of the purchase-money is to be raised by mortgage, and the mortgagee requires the legal estate, three courses are open to him:—

1. He may adopt the scheme, recommended below in the case of leaseholds, of taking a mortgage executed as an escrow, to be

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(i) See L. T. Act, 1897, s. 16. Cf. *Re Foss* (1910), 55 Sol. J. 12.

delivered and dated after first registration of the land is completed. It has been doubted whether this course is not too dangerous to be followed. No question of fees under paragraph E of the Fee Order, 1908, is involved. Until it is decided that a recital of seisin and registration of title, known to both parties to be untrue, can operate to pass the legal estate by estoppel, this latter mode of acquiring the legal estate before registration cannot be advised.

2. He may be registered, or take a transfer on the register instead of a registered charge; but this dislocates the working of the register.

3. Or he may carry out the transaction by means of the following scheme, which, though highly complicated, appears to be in accordance with the modern practice.

After the conveyance to the purchaser, which does not until the land is registered pass the legal estate, and before registration, the mortgagee takes a mortgage from him in common form, with the provisions which will be found in Precedent XX., p. 1144, *inf.*

It will be seen that the scheme involves—1st, conveyance to purchaser; 2nd, mortgage; 3rd, registered charge; 4th, application for restriction; and 5th, short conveyance for getting in legal estate.

Where a new lease is granted the compulsory provisions in rr. 68—70 cannot well be evaded or postponed; nor would a vendor of leaseholds consent to the legal term being left in him after assignment, because he would remain liable to the lessor on the covenants in the lease.

To avoid the fees payable under paragraph E of the Fee Order, 1908, on registering notice under s. 50 of the Act of 1875 of the legal sub-term which would be created under the deed of further assurance (which would be executed if the scheme last described in reference to freeholds were adapted to leaseholds), the following plan is now adopted where the mortgagee requires a legal term to support his security.

A mortgage by sub-demise is executed as an escrow, duly stamped but left undated.

The mortgagee's solicitor is given the conduct of the registration proceedings (*k*). The escrow is handed to him with instructions not to date or *deliver* it to the mortgagee till the title is registered.

As soon as the date of first registration is fixed (*l*) the mortgage will be dated and shown again to the registrar, so that the notice under s. 50 may refer to the right date.

The mortgage usually contains recitals of the mortgagor's title to the lease, of the execution of a charge under r. 96, of the registration of the mortgagor's title "before the execution of these presents," of the intention to register a notice under s. 50, to hand over the land certificate when issued, and that the provisions of the mortgage are to govern the rights of the parties.

The transaction is thus carried out by means of the mortgage, registration of notice under s. 50, and a registered charge (*m*).

(*k*) See r. 104, which shows that a charge executed under r. 96 will not be registered if the registration of the title falls through.

(*l*) Rr. 23, 47, 95, 111.

Estoppel by recitals in mortgages of land about to be registered.

(*m*) It has been suggested that the legal estate or term might be obtained under a mortgage off the register by means of estoppel, notwithstanding that the mortgage was executed before first registration of the title, and therefore before the mortgagor acquired the legal estate.

Thus, if a lessor having *no* estate in the land purports to grant a lease and subsequently acquires the land, the lessee will acquire the legal estate by estoppel: Co. Lit. 47 b, 48 a; *Rawlyn's Case* (1587), 4 Co. Rep. 52 a.

In the case of freeholds there would have to be a clear recital of seisin and of the registration of the title of the mortgagor, though he had not registered. In the case of leaseholds the necessary recitals would be of the lease or assignment and of the registration of the mortgage.

There are at least two difficulties in adopting the view that by estoppel the legal estate would be got in upon registration of the title: first, it is not a case in which the mortgagor has no interest in the land at the date of the mortgage, for he can pass or create an equitable estate or term; and secondly, there appears to be no case in which a purchaser has been held entitled to take advantage of an untrue recital which he knew to be untrue.

As to a subsequent disposition operating to feed the estoppel raised under

*As to other Matters.*

When the owner leases for a life or lives, or for more than twenty-one years, or grants a lease for a less term unaccompanied by actual occupation, or enters into an agreement for such a lease, the person entitled to or interested in the lease or agreement should apply to the registrar to have a notice of it entered on the register under ss. 50 and 51 of the Act of 1875 (*n*). These sections apply also to mortgage terms.

Applications for registering notices of leases.

Any disposition by way of sale, mortgage, lease, or otherwise of any unregistered interest in registered land, and also any disposition by a registered proprietor, not being a transfer or charge of the whole fee simple, or the mines and minerals (*n*), or the whole registered leasehold interest, must be by an unregistered deed just as if the land were not registered; and, unless arrangements are made for a restriction, the person entitled under the unregistered deed (not being a lease) should apply to the registrar to register a caution against the land under s. 53 of the Act of 1875 (*p*).

What dispositions must be by unregistered deed.

In the case of all such dispositions off the register, including the grant of easements (*q*), and the grant of leases, it is not sufficient for the purchaser or lessee to see that he is dealing with the registered proprietor, but he must investigate the title off the register.

Investigation of title where the dealing takes place off the register.

For the purposes of such investigation, the abstract in the case of an absolute title should go back to the last transfer for value on the register (*r*), and in the case of a possessory title should

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a prior disposition, and as to the requisites of estoppel, see *Onward, &c. Socy. v. Smithson*, 1893, 1 Ch. 1; 62 L. J. Ch. 138; Norton on Deeds, 191 *et seq.*, 568, 569.

(*n*) See rr. 201—206.

(*o*) Forms 28—33.

(*p*) Rr. 226—233.

(*q*) Act of 1875, s. 49; *Dayrell v. Hoare* (1840), 12 A. & E. 356; 9 L. J. Q. B. 299.

(*r*) Act of 1875, s. 30.

also include the title to estates, rights and interests, paramount to the fee simple acquired by first registration (*s*). It should also be shown that, if the intending vendor or lessor is a tenant for life, mortgagee or trustee, he has the power to grant the easement or lease in question.

As to settlements of registered land, see Vol. II., under the heading of "Settlements."

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(*s*) Act of 1875, ss. 8, 32.

## DIVISION V.

### FORMS AND PRECEDENTS RELATING TO REGISTERED LAND OR LAND IN A COM- PULSORY DISTRICT.

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#### SECTION I.

##### SPECIAL CONDITIONS OF SALE.

(i.) *Special Conditions of Sale applicable to Registered Land.*

1. THE property was on the — day of — registered, under the Land Transfer Acts, 1875 and 1897, in the name of the Vendor [*or of X. Y., of, &c.*] with a possessory title on the occasion of the purchase thereof from —, which purchase was carried into effect by an Indenture dated the — day of —. The abstract of title [to each Lot] shall commence with the said Indenture [*or, The abstract of title to each Lot the purchase-money whereof shall not exceed £— shall commence with the said Indenture, and the abstract of title to each Lot the purchase-money whereof shall exceed £— shall commence with an Indenture dated, &c., being a Conveyance on a sale (or as the case may be)*]; And the Vendor will (with the abstract) give to the Purchaser or his solicitor the usual authority to inspect the register (a).

Title to commence with Conveyance on sale to first registered proprietor with possessory title.

2. THE property was on the — day of — registered, under the Land Transfer Acts, 1875 and 1897, in the name of the Vendor [*or of X. Y., of, &c.*] with a possessory title; and a statutory declaration was then filed at the Land Registry stating that the Vendor [*or the said X. Y.*] was entitled to the property in fee simple for his own benefit. The Vendor will deliver to the [each] Purchaser or his solicitor an abstract consisting of a copy of the land certificate and the said statutory

Title to commence with statutory declaration filed on first registration.

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(a) See Form 67 in the Rules.

declaration, together with an authority to inspect the register; And the [each] Purchaser shall accept the said statutory declaration as conclusive evidence that no estate, right or interest adverse to or in derogation of the title of the Vendor [or the said X. Y.] was subsisting or capable of arising at the time of first registration [unless he shall within seven days from the day of sale give a notice in writing to the Vendor's solicitor requiring an abstract of the title prior to first registration and offering to pay for the same, in which case an abstract of such title shall be delivered to him accordingly, such abstract to commence with an Indenture, &c. (b)].

Commence-  
ment of title  
where regis-  
tration is with  
qualified title.

3. The property was on the — day of — registered, under the Land Transfer Acts, 1875 and 1897, in the name of the Vendor [or of X. Y., of, &c.] with a qualified title, estates, rights and interests arising before the — day of — being excepted from the effect of registration. The Vendor will deliver to the Purchaser or his solicitor an abstract consisting of the land certificate, together with an authority to inspect the register. The Vendor will also make a statutory declaration (to be prepared by and at the expense of the Purchaser) to the effect that he has been in possession or receipt of the rents and profits of the property since the date of first registration [or since the — day of —], and that during that time no adverse claim has been made thereto; And the Purchaser shall accept such declaration as conclusive evidence that no estate, right or interest adverse to or in derogation of the registered title is now subsisting or capable of arising.

Commence-  
ment of title  
on sale by  
chargee.

4. The property is registered under the Land Transfer Acts, 1875 and 1897, with an absolute title [or a good leasehold title] [or with a possessory title, the date of first registration being the — day of —], and the Vendor is the registered proprietor of a charge on the said property, and is selling under the statutory power of sale. The abstract of title shall commence with the certificate of charge [or with an Indenture dated, &c.], and the Vendor will (with the abstract) give to the Purchaser or his solicitor an authority to inspect the register.

Commence-  
ment of title  
on sale by

5. The Vendor is the tenant for life [or a person having the

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(b) The words in brackets can be inserted or omitted according to the circumstances. Where the title registered is absolute or "good leasehold" a special condition is not required.

powers of a tenant for life] within the meaning of the Settled Land Acts, 1882 to 1890, under a Settlement dated the — day of —, and he was registered as proprietor under the Land Transfer Acts, 1875 and 1897, on the — day of —, with a possessory title. The abstract of title shall commence with the said Settlement [*or* with an Indenture dated, &c.].

tenant for life under Settlement made prior to first registration.

6. THE property was sold in the year — to X. Y., of, &c., and he was registered as the first proprietor thereof with a possessory title, but no conveyance was executed to him. No objection shall be taken on account of the legal estate being outstanding or otherwise on account of the absence of such conveyance.

Where first registered proprietor with possessory title is registered without taking a conveyance (c).

7. THE description of the property [*or* Lots] contained in the particulars is based on the description contained in the register, and shall be taken to be correct, and any error found therein shall not annul the sale nor entitle the [any] Purchaser to be discharged from his purchase, nor shall the Vendor or the [any] Purchaser be allowed any compensation in respect thereof; but this condition is not to prejudice the right of the [any] Purchaser to claim indemnity under the Land Transfer Act, 1897, or to affect the liability of the Vendor to refund any indemnity paid under that Act.

No compensation for error in registered description (d).

8. (*To be substituted for condition 8 (i.) in Precedent I., Sect. II., p. 1115, *inf.*, where sale is by tenant for life under a Settlement dated prior to first registration with a possessory title.*) Upon payment of the remainder of the purchase-money at the time and place aforesaid, the Vendor will execute to the Purchaser a Conveyance by deed to take effect under the provisions of the Settled Land Acts, 1882 to 1890, as if the land were unregistered, and also an instrument of transfer in the prescribed form, and the trustees of the Settlement for the purposes of the said Acts will join in the conveyance and transfer for the purposes for which their concurrence is necessary. The conveyance and transfer shall be prepared by and at the expense of the Purchaser and left by him at the office aforesaid not less than seven days before the day fixed for completion.

Conveyance and transfer on sale by tenant for life under Settlement made prior to first registration.

(c) See Act of 1875, s. 5 (1). It is assumed in the above condition that the contract for sale to X. Y. and the payment of the purchase-money can be proved.

(d) If the boundaries have been accurately defined (rr. 272, 273), and the whole of the property comprised in a title is sold, this condition should be omitted.

Provisional registration where land certificate relates also to land retained by Vendor.

9. (*Where the sale is in one Lot and the land certificate relates also to property retained by the Vendor.*) THE present land certificate relates to property retained by the Vendor as well as to the property now sold. The Vendor and the Purchaser [of each Lot] shall before completion, but at the cost of the Purchaser [of each Lot], apply under Rule 157 for the provisional registration of the Purchaser [of each Lot].

(ii.) *Special Conditions of Sale applicable to Land within a Compulsory Area not yet registered (c).*

Where legal estate is outstanding in a trustee for Vendor and the Purchaser may desire to postpone registration and raise part of the purchase-money.

10. THE legal estate in the property is now outstanding in a trustee for the Vendor, and inasmuch as the Purchaser may desire to raise part of the purchase-money by a mortgage of the property and to postpone the registration of the title under the Land Transfer Acts, 1875 and 1897, the trustee shall not, unless the Purchaser so requires, join in the conveyance to the Purchaser, but shall at the expense of the Purchaser concur in any such mortgage to convey the legal estate.

Where part of the purchase-money is to be left on mortgage with the Vendor, and the property is not to be registered.

11. THE sum of £— may, if the Purchaser so desires, on completion be left on mortgage of the fee simple of the property, to carry interest at the rate of £— per cent. per annum, reducible on punctual payment to £— per cent. per annum, and if that arrangement is made the Purchaser shall on completion execute a mortgage of the property to the Vendor for securing the said sum and interest, and that mortgage shall contain such covenants and provisions as the Vendor may reasonably require, including a covenant by the Purchaser for himself and his assigns against the registration of the property under the Land Transfer Acts, 1875 and 1897, without the consent in writing of the Vendor, and an authority for the Vendor at the expense of the Purchaser to lodge a caution against the registration of the title.

Where the legal estate was originally vested in the Vendor, and the advance is to be made by a stranger.

12. FOR the purpose of enabling the [each] Purchaser to raise part of his purchase-money on the security of the property [Lot purchased by him] without registering the title under the Land Transfer Acts, 1875 and 1897, the Vendor will, if so desired by the [a] Purchaser and at his expense, before completion convey

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(c) See Dissertation, p. 1103, *sup.*, as to temporarily evading the compulsory provisions.

the legal estate in the property [Lot purchased by him] to a trustee nominated by the [a] Purchaser in trust for the Vendor. If the [a] Purchaser elects to raise part of his purchase-money on mortgage of the property [Lot purchased by him], the said trustee will not concur in the conveyance to the [such] Purchaser, but will on completion join at the expense of the [such] Purchaser in the intended mortgage, but for the purpose only of conveying the legal estate to the intended Mortgagee in fee simple, and the said trustee shall not be required to give any covenants except those implied by his being expressed to convey as trustee.

13. A sum not exceeding two-thirds of the purchase-money may, if the Purchaser desires, be left on mortgage of the property, to carry interest at the rate of £4 per cent. per annum, and the deed of mortgage and the instrument of charge, under Rule 96, for giving effect to the same on the register shall be prepared by the Vendor, and shall be in such form and contain such covenants and provisions as may reasonably be required by the Vendor (including in the case of the mortgage deed an irrevocable power of attorney for effecting the registration, for getting in the legal estate after registration, and for registering a restriction for protecting the same), and the Purchaser shall immediately after the execution of the conveyance to him apply for the registration of his title under the Land Transfer Acts, 1875 and 1897, and leave with the registrar for registration the said instrument of charge with an application for the registration of the said restriction, and shall also execute and deliver the said mortgage deed and hand over the land certificate when obtained, and all costs, charges and expenses of and incidental to the registration of the title, the negotiation, preparation, registration and completion of the mortgage, the instrument of charge, the getting in of the legal estate, and the restriction, shall be paid by the Purchaser at the time of completion, or as soon thereafter as the same shall have been incurred.

Clause to be used where the compulsory provisions cannot be evaded (*f*), and the Purchaser is to have power to leave part of the purchase-money on mortgage.

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(*f*) Where land is held on trust for sale, or is sold under the Settled Land Acts, or by a mortgagee under a power, the compulsory provisions cannot be evaded, see Dissertation, p. 1104, *sup*.

Cases to which the clause applies.

Where the money is to be advanced by a stranger, no such clause is required; he will make his own bargain.

The clause, with slight modifications, can be adapted to leaseholds: in this case a notice under L. T. Act, 1875, s. 50, will take the place of the

Purchaser of leaseholds to prove that he has been registered as proprietor.

14. The Purchaser shall upon the delivery of the assignment to him forthwith apply to be registered as proprietor of the said Lease under the Land Transfer Acts, 1875 and 1897, and shall do all things necessary to complete the registration, and shall as soon as the land certificate is issued produce the same to the solicitors of the Vendor, or furnish such other evidence as the Vendor may require, to prove that the title to the said Lease has been duly registered, and shall, if the Vendor so desires, give to him an irrevocable power of attorney to effect such registration, and the said assignment shall (if the Vendor so requires) contain a covenant by the Purchaser to give effect to this clause (g).

## SECTION II.

### GENERAL CONDITIONS OF SALE OF REGISTERED LAND BY AUCTION.

#### No. I.

#### GENERAL CONDITIONS of SALE of REGISTERED FREEHOLD LAND in ONE LOT.

1 TO 4. (*As in General Conditions of Sale by Auction, Precedent I., pp. 211—215, sup., but omitting in condition 4 the words “or if any question shall arise as to the conveyance,” and the words “waive the question” (h).)*

Commencement of title (absolute title).

5. (*Absolute title.*) The Vendor, who is the registered proprietor under the Land Transfer Acts, 1875 and 1897, with an absolute title, will deliver to the Purchaser or his solicitor an abstract of title, consisting of a copy of the land certificate [or

restriction, and the mortgage will be executed as an escrow till registration of the title, so as to avoid the further assurance and the additional fees under para. E of the L. T. Fee Order, 1908, see Prec. XXII., *inf.*

Legal term will not pass until registration except on surrenders.

(g) Until first registration the legal term in leaseholds having forty years to run or two lives to fall in within a compulsory area will not pass under an assignment on sale (L. T. R., rr. 68 to 70), so that the vendor will not be discharged from the liability under the lease depending on his privity of estate. This does not apply in the case of the surrender of a lease to the owner of the immediate reversion: r. 70.

(h) Condition 4, as to objections, requisitions, &c., will not be required where the property is registered with an absolute title, or where the conditions preclude any inquiry as to the title prior to first registration.

of the entries in the register affecting the property], together with an authority to inspect the register.

5A. (*Possessory title*.) THE Vendor is the registered proprietor under the Land Transfer Acts, 1875 and 1897, with a possessory title, the date of first registration being the — day of —. The abstract of title shall commence with an Indenture dated, &c., being a Conveyance on a sale (*or as the case may be*), and the Vendor will (with the abstract) give to the Purchaser or his solicitor an authority to inspect the register.

Ditto (*possessory title*) (*i*).

(*Insert here any special conditions which the state of the title may require, see Forms in Division I., Part I., sup.*)

6. THE property is believed, and shall be deemed to be, correctly described in the particulars as to quantities and otherwise, and is sold subject to all easements (if any) affecting the same. If any error or omission in the particulars shall be discovered, the same shall not annul the sale nor entitle either party to compensation (*k*).

Error in the particulars.

7. THE statutory declaration to which the Purchaser is entitled under section sixteen of the Land Transfer Act, 1897, as regards matters declared by the Acts not to be incumbrances, shall be prepared by and at the expense of the Purchaser.

Statutory declaration as to matters not incumbrances.

8. (*i*) UPON payment of the [remainder of the] purchase-money at the time and place aforesaid, the Vendor will execute to the Purchaser a proper transfer of the property (*m*), and deliver to him the land certificate (*n*). The instrument of transfer shall

Vendor to execute transfer and deliver land certificate on completion (*l*).

(*i*) For other forms of condition where registration is with possessory title or with qualified title, or where vendor is a chargee or a tenant for life under a settlement made prior to first registration, see Special Conditions, Sect. I. (*i*), *sup.*, of this Division.

(*k*) For other forms of condition, see Form No. 7, p. 1111, *sup.*; also Forms Nos. 154—157, pp. 203—205, *sup.*

(*l*) If the sale is by a tenant for life under a settlement made prior to first registration, substitute Form No. 8, p. 1111, *sup.*

(*m*) Add, if the registration is subject to paramount interests: —

AND ALSO a separate conveyance of any estate, right or interest paramount to the power of disposition of the registered proprietor which may be required.

(*n*) If any registered charges are paid off out of the purchase-money the instruments of charge will be handed over to the Registrar.

If the land certificate relates also to property retained by the vendor, omit the reference to it here, and insert Form No. 9, p. 1112, *sup.*

be prepared by and at the expense of the Purchaser, and be left by him at the office aforesaid for execution by the Vendor not less than seven days before the day fixed for completion, and the Purchaser may insert therein (if he thinks fit) apt words to pass the fee simple off the register as from the time of its execution [and to imply the usual covenants for title on the part of the Vendor, and a declaration that the Vendor's liability under such covenants shall not be limited or affected by section eighteen of the Act of 1875 as amended, or by any reference to that section in other parts of the said Act or in the Act of 1897 (o)].

(ii.) (*Add condition 9 (2) of Precedent I. of Conditions of Sale by Auction, p. 217, sup., as to stamping in respect of increment value duty.*)

9. (*If property is insured against fire, add Form No. 158, p. 205, sup.*)

10. If the Purchaser shall neglect, &c. (*same as condition 12, p. 217, sup.*).

BE IT REMEMBERED, &c. (*Memorandum to be signed at end of conditions, p. 218, sup.*).

## NO. II.

### GENERAL CONDITIONS OF SALE OF FREEHOLD REGISTERED LAND in LOTS.

1 TO 4. (*As in Conditions of Sale by Auction, Precedent I., pp. 211—215, sup., but omitting in condition 4 the words “or if any question shall arise as to the conveyance,” and the words “waive the question.”*)

5. (*Absolute title.*) THE Vendor (who is registered proprietor under the Land Transfer Acts, 1875 and 1897, with an absolute title) will deliver to the Purchaser of each Lot or his solicitor an abstract of title, consisting of a copy of the land certificate [or of the entries in the register relating to that Lot], together with an authority to inspect the register.

Commence-  
ment of title  
(absolute  
title).

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(o) The words in brackets will be omitted if the vendor is a trustee or chargee, or if there is to be a separate deed of conveyance containing express or implied covenants for title.

5A. (*Possessory title.*) THE Vendor is the registered proprietor under the Land Transfer Acts, 1875 and 1897, with a possessory title, the date of first registration being the — day of —. The abstract of title to each Lot shall commence with an Indenture, dated, &c., being a Conveyance on a sale (*or as the case may be*), and the Vendor will with the abstract give to the Purchaser of each Lot or his solicitor an authority to inspect the register. (*Insert here any special conditions which the state of the title may require, see Forms in Part I., Division I., sup.*)

Ditto (possessory title) (p).

6. THE several Lots are believed, &c. (*as in last Precedent, condition 6*).

Errors in particulars.

7. THE statutory declaration to which a Purchaser is entitled, &c. (*as in last Precedent, condition 7*).

8. WHERE two or more Lots are included in one tenancy the rent shall be apportioned between them as provided in the particulars, and the tenant shall not be required to consent to or concur in the apportionment.

Apportionment of rent.

9. (i.) UPON payment of the remainder of the purchase-money at the time and place aforesaid, the Vendor will execute to the Purchaser of each Lot a proper transfer thereof, to be prepared, &c. (*as in last Precedent, condition 8*).

Completion of purchase.

10. As the present land certificate relates to all the Lots included in this sale, the Vendor and each Purchaser shall before completion, but at the cost of each Purchaser, apply under Rule 157 for the provisional registration of each Purchaser.

Application for provisional registration of each Purchaser.

11. (*Where the registration is with a possessory title and the deeds relating to the prior title are in the Vendor's possession.*) AFTER the sale of all the Lots, &c. (*Form No. 143, p. 199, sup., adding at the end*), In this condition the word "documents" means documents relating to the title prior to first registration.

As to title deeds.

12. (*If any Lot is insured against fire, add special condition No. 158, p. 205, sup.*)

Other conditions.

13. IF any Purchaser shall neglect, &c. (*same as condition No. 12, p. 217, sup.*).

BE IT REMEMBERED, &c. (*Memorandum to be signed at end of conditions, p. 218, sup.*).

(p) For other forms as to commencement of title, see Forms Nos. 1—5, pp. 1109, 1110, *sup.*

## No. III.

GENERAL CONDITIONS of SALE of REGISTERED FREE-  
HOLD LAND in LOTS, each Lot to be made subject to  
CONDITIONS as to BUILDING and USER.

1 TO 7. (*As in last Precedent.*)

Special condi-  
tions as to  
building and  
user.

8. (i.) THE several Lots are to be made subject to the following conditions (namely):—(*Here insert conditions desired. For a specimen of such conditions, see Form No. 126, p. 192, sup.*)

(ii.) EVERY purchaser shall in his conveyance or transfer covenant (*continue Form No. 127, p. 193, sup., adding at the end*), And proper applications shall be made under section eighty-four of the Land Transfer Act, 1875 (as amended), for entries on the register to be made for annexing conditions to give effect to the restrictive covenants.

Vendor to  
transfer,  
subject to  
conditions.

9. (i.) UPON payment by the Purchaser of each Lot of [the residue of] his purchase-money at the time and place aforesaid, the Vendor shall execute to him a proper transfer thereof subject to the above conditions, so far as the same are applicable to that Lot, and are capable of registration, and the Purchaser shall apply to the Registrar for the entry of restrictive conditions as aforesaid. The transfer and deed of covenant (if any) shall be prepared by and at the expense of the Purchaser, and shall be left at the office aforesaid not less than seven days before the said — day of — next. If a separate deed of covenant is not employed, the instrument of transfer shall be executed in duplicate. The Purchaser shall execute the duplicate free of expense to the Vendor, and produce the original to the Vendor duly stamped to enable him to have the stamp on the duplicate denoted.

(ii.) (*Add condition 9(2) of Precedent I. of Conditions of Sale by Auction, p. 217, sup., as to stamping in respect of increment value duty.*)

10, 11, 12, AND 13. (*Same as conditions 10, 11, 12, and 13 of last Precedent.*)

BE IT REMEMBERED, &c. (*Memorandum to be signed at end of conditions, p. 218, sup.*).

## No. IV.

## GENERAL CONDITIONS of SALE of REGISTERED LEASEHOLDS.

1 TO 4. (*As in General Conditions of Sale, Precedent I., pp. 211—215, sup., but omitting in condition 4 the words “or if any question shall arise as to the conveyance,” and the words “waive the question.”*)

5. THE Vendor is the registered proprietor with an absolute [good leasehold or possessory] title under the Land Transfer Acts, 1875 and 1897. The title shall commence with the land certificate [or with the Lease under which the property is held], and the Vendor will (with the abstract) give to the Purchaser an authority in writing to inspect the register. A copy of the Lease under which the property is held will be produced at the sale, and may be inspected for seven days before the sale at the office of the Vendor's solicitors, and the Purchaser, whether he inspects the same or not, shall be deemed to have notice of all the contents thereof. [The Purchaser shall not require the production of, or make any objection or inquiry in respect of, the intermediate title between the Lease and the date of the first registration, but shall assume that the property had then become effectually vested in the person registered as proprietor for the residue of the term.]

Conditions as to title.

(*Add any special conditions which the state of the title may require, see Forms in Part I., Division I., sup.*)

6. THE statutory declaration, &c. (*as in condition 7 of Precedent I. of this Section, sup.*).

7. (i.) UPON payment of [the residue of] the purchase-money at the time and place aforesaid, the Vendor will execute to the Purchaser a proper transfer of the property, and at the same time deliver to him the land certificate [or the office copy of the Lease]. The transfer shall be prepared by and at the expense of the Purchaser, and shall be left at the office aforesaid for execution by the Vendor not less than seven days before the day fixed for completion. [The transfer shall contain the usual words implying covenants for title, and a declaration that the Vendor's liability under such covenants shall not be limited or affected by

On completion, Vendor to execute transfer (q).

(q) If the vendor is a tenant for life under a settlement made prior to the date of first registration, Form No. 8, p. 1111, *sup.*, should be substituted here, such condition being equally applicable to leasehold property.

section eighteen, as amended, of the Act of 1875 or by any reference to that section in other parts of the said Act or in the Act of 1897.]

(ii.) (*Add condition 9 (2) of Precedent I. of Conditions of Sale by Auction, p. 217, sup., as to stamping in respect of increment value duty.*)

8. (*Power to resell in case of Purchaser's default, condition No. 12, p. 217, sup.*)

BE IT REMEMBERED, &c. (*as at p. 218, sup.*).

### SECTION III.

## AGREEMENTS FOR SALE.

### No. I.

#### AGREEMENT for SALE of REGISTERED FREEHOLD LAND.

Parties.

AN AGREEMENT, made the — day of —, 19—, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part, WHEREBY it is agreed as follows:—

1 TO 3. (*Same as in Agreement for Sale, Precedent I., pp. 231—234, sup.*)

4. (*Same as condition 5 or 5A of Precedent I. of Sect. II., p. 1114, sup.*)

(*Add any special conditions which the state of the title may require, see Forms in Part I., Division I., sup.*)

5. THE statutory declaration, &c. (*condition 7 of Precedent I. of Sect. II., p. 1115, sup.*).

6. UPON payment of the [remainder of the] purchase-money at the time and place aforesaid, the Vendor, &c. (*as in condition 8 of Precedent I. of Sect. II., p. 1115, sup.*).

7. (*If the property is insured against fire, add Form No. 158, p. 205, sup.*)

8. IF the Purchaser shall neglect, &c. (*same as Clause 11 of Agreement for Sale, Precedent I., p. 236, sup.*).

AS WITNESS, &c.

#### THE SCHEDULE ABOVE REFERRED TO.

(*The parcels should be described by the registered description, with any further particulars that may be necessary, and stating any leases or tenancies.*)

No. II.

AGREEMENT *for SALE of REGISTERED LEASEHOLD PROPERTY (qq).*

AN AGREEMENT (*as in last Precedent*).

1 TO 3. (*Same as in Agreement for Sale, Precedent I., pp. 231—234, sup.*)

4 TO 6. (*Same as conditions 5 to 7 of Precedent IV. of Sect. II., p. 1119, sup.*)

7. (*Same as clause 11 of Agreement for Sale, Precedent I., p. 236, sup.*)

AS WITNESS, &c.

SECTION IV.

PRECEDENTS RELATING TO SALES, MORTGAGES,  
AND OTHER MATTERS IN RESPECT OF REGISTERED LAND, OR LAND IN A COMPULSORY DISTRICT.

No. I.

TRANSFER *of REGISTERED FREEHOLD LAND to a PURCHASER (r).*

Land Transfer Acts, 1875 and 1897.

District —.

Parish —.

No. of title —.

(*Date.*) In consideration of — pounds (£—) paid to me Consideration.  
(the receipt whereof is hereby acknowledged), I, A. B., of, &c. Receipt.

(*qq*) On a sale of a mortgage term only the purchaser cannot, it seems, insist on the vendor obtaining the registration of the purchaser as proprietor of the head term: *Re Voss* (1910), 55 Sol. J. 12.

(*r*) It will be observed that this Precedent contains the following additions to the Form 20, annexed to the Rules, viz. (1): A receipt clause is added; (2) The words “in fee simple” follow the name of the transferee; and (3) A declaration as to the implied covenants for title is inserted. The reasons for these additions are given in the Dissertation, p. 1097, *sup.*; and see the notes to Form 20 annexed to the Rules.

In the absence of special stipulations, the words “as beneficial owner” and the declaration as to the covenants for title cannot be insisted on if the registration is with an absolute title: Act of 1897, s. 16 (3).

An acknowledgment and undertaking as to title deeds relating to the  
P. 71

Transfer.

(Vendor), As Beneficial Owner, hereby transfer to C. D., of, &c. (Purchaser), in fee simple the land [(s) shown and edged with red on the accompanying plan and (if so) described in the — Schedule hereto, being part of the land] comprised in the title above referred to:

S. 18 of Act of 1875 not to affect covenants for title.

AND I declare that my liability under the covenants for title implied by law shall not be limited or affected by section eighteen of the Act of 1875, as amended by the Act of 1897, or by any reference to that section in other parts of the said Act or in the Act of 1897. [And I acknowledge the right of the said C. D. to production of the documents mentioned in the — Schedule hereto which are in my custody, and to delivery of copies thereof, and I undertake for the safe custody thereof.]

(Add Form No. 11, *Purchase Deeds*, Sect. III., p. 321, if purchase-money does not exceed £500.)

(Add Schedules, if required.)

Signed, sealed and delivered (t) }  
by the said A. B., in the } Signature of A. B. (SEAL.)  
presence of : }

## NO. II.

### CONVEYANCE of REGISTERED FREEHOLD LAND, and COVENANT to SURRENDER COPYHOLDS, and INSTRUMENT of TRANSFER of FREEHOLDS (u).

#### 1.

Parties.

THIS INDENTURE, made the — day of —, 19—, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part,

title paramount to the estate conferred by first registration are also added; but as the instrument of transfer will be retained at the registry (see r. 119), these should be taken separately under a 6*d.* agreement stamp, unless the instrument of transfer is executed in duplicate.

General Map and parcel book.

(s) The land may now be described by means of a parcel number on the General Map and parcel book: r. 270, see also rr. 3, 269—282.

(t) See rr. 107 to 110 as to execution and attestation. If schedules are used, the execution and attestation must be at the foot of the schedules. The purchaser may, at his own cost, have the execution by the vendor attested by some person appointed by him, who may, if he thinks fit, be his own solicitor: Conv. Act, 1881, s. 8; L. T. Act, 1897, s. 9 (1).

(u) The deed of conveyance will have the proper *ad valorem* and increment value stamp, and the instrument of transfer will require no stamp.

and C. D., of, &c. (hereinafter called the Purchaser), of the other part:

WHEREAS the Vendor is now seised in fee simple in possession free from incumbrances and is also (x) the registered proprietor with a — title, under the Land Transfer Acts, 1875 and 1897, of the freehold hereditaments hereinafter described, and is also seised free from incumbrances of the copyhold hereditaments hereinafter covenanted to be surrendered for an estate of inheritance according to the custom of the Manor of —:

Recital of  
seisin and  
registration.

AND WHEREAS the Vendor has agreed to sell the said freehold and copyhold hereditaments to the Purchaser at the price of £—, of which for the purposes of the Stamp Act, 1891, the sum of £— has been apportioned as the purchase-money attributable to the said freehold hereditaments and the balance to the said copyhold hereditaments.

Agreement  
for sale.

AND WHEREAS it is intended that, as regards the said freehold hereditaments, these presents shall be accompanied by an instrument of transfer in the prescribed form so as to enable the Purchaser to be registered as proprietor thereof:

Of intended  
instrument of  
transfer.

NOW THIS INDENTURE WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Purchaser

Conveyance of  
freeholds.

ALL AND SINGULAR the hereditaments in the Parish of —, in the County of — [described in the — Schedule hereto, being part of the hereditaments], registered under the said Acts under the heading District —, Parish —, No. of title —, and delineated on the plan drawn on these presents and thereon edged red,

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple.

2. IN further pursuance of the said agreement and for the consideration aforesaid (*Covenant to surrender copyholds, Purchase Deeds by absolute owners, Group A, Precedent V., p. 328, sup.*).

(If any documents respecting the title to estates paramount to that of the first registered proprietor are in the Vendor's posses-

(x) It seems best, where the legal estate is to pass before registration, to recite the vendor's title in the usual way. The last transfer for value on the register makes a good root of title for this purpose.

sion and relate to other property, or any steward's copies or other documents are to be retained, the usual acknowledgment of right to production and undertaking for safe custody should be added. Also Form No. 11, *Purchase Deeds*, Sect. III., p. 321, if purchase-money does not exceed £500.)

IN WITNESS, &c.

## 2.

(Instrument of transfer in the prescribed Form, No. 20, without any addition. Where a conveyance is executed off the register under L. T. Act, 1875, s. 49, it is assumed that the implied covenants for title will be construed as if the land were unregistered.)

## No. III.

### TRANSFER on SALE of REGISTERED LEASEHOLD Property.

(The same as No. I., omitting the words "in fee simple" and adding after "the title above referred to" the words "for the residue of the term granted by the registered Lease.")

## No. IV.

### TRANSFER on SALE of PART of the PROPERTY comprised in a REGISTERED LEASE (y).

(Same as No. III., adding after "the registered Lease" the words "subject to the yearly rent of £——, part of the rent thereby reserved," and adding also the following provisions):—

AND IT IS HEREBY AGREED as follows:—

[1. THE liability of the Transferor under the covenants for title, &c. (as in No. I.).]

2. THE covenant by the Transferee, implied by s. 39 of the Act of 1875, is not to be implied.

3. THE Transferee will henceforth pay the said apportioned rent of £——, and perform and observe the covenants and conditions in the registered Lease contained and on the Lessee's part to be performed and observed so far as the same relate to the land hereby transferred, and will keep the Transferor and his

s. 39 of Act  
negatived.

Covenant by  
Transferee to  
pay apportioned  
rent and observe  
covenants of  
Lease as regards  
property  
transferred.

(y) In most cases title will be made by sub-demising the property to the purchaser, who will then register his title to the underlease and lodge a notice against the title to the head lease under L. T. Act, 1875, s. 50.

estate and effects indemnified against all claims and demands on account of the nonpayment of the said apportioned rent or any part thereof or the breach of the said covenants and conditions so far as the same relate as aforesaid.

4. THE Transferor will henceforth pay the rent of £——, being the residue of the rent reserved by the registered Lease, and perform and observe the covenants and conditions in the same Lease contained and on the part of the Lessee to be performed and observed so far as the same relate to the land not hereby transferred, and will keep the Transferee and his estate and effects indemnified, &c. (*as in the last clause to the end*).

Similar covenant by Transferor as to property retained by him.

5. IN the above provisions the expressions "the Transferor" and "the Transferee" mean the said A. B. and the said C. D. respectively, and include, where the context permits, their respective executors, administrators and assigns.

Meaning of terms.

6. (*Add Form No. 11, Purchase Deeds, Sect. III., p. 321, if required.*)

#### No. V.

TRANSFER of REGISTERED FREEHOLD or LEASEHOLD Property on sale by CHARGE (z).

(*Heading and date.*) In consideration of —— pounds (£——) paid to me (the receipt whereof is hereby acknowledged), and in exercise of the power of sale conferred by the charge dated, &c., and registered, &c., and by the Conveyancing and Law of Property Act, 1881, I, A. B., of, &c. (*Chargee and Vendor*), As Mortgagee, hereby transfer, &c. (*as in No. I. or No. III., omitting the declarations as to the covenants for title, and adding at the end*), discharged from the said charge.

(*Add Form No. 11, Purchase Deeds, Sect. III., p. 321, if purchase-money does not exceed £500.*)

#### No. VI.

TRANSFER of REGISTERED LAND on sale by TRUSTEES holding on trust for sale with consent of person at whose request the trust for sale is exercisable (a).

(*Heading and date.*) In consideration of —— pounds (£——) paid to us (the receipt whereof is hereby acknowledged), we,

(z) Compare prescribed Form 34.

(a) It is assumed that a restriction has been registered in the prescribed Form 8.

A. B., of, &c., and C. D., of, &c. (*Vendors*), with the consent of E. F., of, &c. (*Beneficiary for Life*), and As Trustees, hereby transfer to X. Y., of, &c. (*Purchaser*), in fee simple the land, &c. (*see Precedent I. of this Section.*)

(*Execution and attestation.*)

## No. VII.

DEED OF CONVEYANCE *by the* FIRST REGISTERED PROPRIETOR *and a* MORTGAGEE *under a* LEGAL MORTGAGE *made prior to* FIRST REGISTRATION *and* INSTRUMENT of TRANSFER *of* REGISTERED LAND.

### 1. DEED OF CONVEYANCE.

Parties. THIS INDENTURE, made, &c., BETWEEN C. D., of, &c. (hereinafter called the Mortgagee), of the 1st part, A. B., of, &c. (hereinafter called the Vendor), of the 2nd part, and E. F., of, &c. (hereinafter called the Purchaser), of the 3rd part :

Recitals of Mortgage, WHEREAS (*Recite Mortgage in fee by Vendor to Mortgagee, Form No. 2, Purchase Deeds, Part I., Sect. I., p. 291, sup.*) :

Of registration, with possessory title. AND WHEREAS on the — day of —, 19—, the Vendor was duly registered under the Land Transfer Acts, 1875 and 1897, as proprietor of the said hereditaments with a possessory title under the heading District —, Parish —, Title No. — :

Of agreement for sale. AND WHEREAS (*Recite agreement for sale*) :

Of prescribed transfer of even date. AND WHEREAS it is intended that by a deed of transfer in the prescribed form, bearing even date herewith, the Vendor shall transfer the said hereditaments to the Purchaser so as to enable him to be registered as proprietor thereof :

Of state of mortgage debt, &c. AND WHEREAS (*Recite state of mortgage debt, and that on payment the Mortgagee agrees to join*) :

NOW THIS INDENTURE WITNESSETH as follows :—

Conveyance. 1. In pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Mortgagee by the direction of the Vendor (the receipt of which sum the Mortgagee hereby acknowledges), and of the further sum of £— paid by the Purchaser to the Vendor (the payment and receipt of which sums of £— and £—, making

together the total purchase-money of £——, the Vendor hereby acknowledges), the Mortgagee, As Mortgagee, and according to his estate, hereby conveys and releases and the Vendor, As Beneficial Owner, hereby conveys and confirms unto the Purchaser

ALL, &c. (*see Forms, Purchase Deeds, Sect. II.*).

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple, discharged from all principal money and interest secured by and from all claims under the recited Mortgage.

Habendum.

2. (*Add acknowledgment and undertaking, if required, Form No. 6, Purchase Deeds, Sect. III., p. 317.*)

3. (*Also Form No. 11, Purchase Deeds, Sect. III., p. 321, if purchase-money does not exceed £500.*)

IN WITNESS, &c.

## 2. INSTRUMENT OF TRANSFER.

(*This will be a transfer by the Vendor alone in the prescribed Form, No. 20, without additions.*)

## No. VIII.

### TRANSFER of REGISTERED LAND on sale by TENANT FOR LIFE under the S. L. ACTS (b).

(*Heading and date.*) In consideration of —— pounds (£——) paid to C. D., of, &c., and E. F., of, &c. (*Trustees for the purposes of the S. L. Acts*), by X. Y., of, &c. (*Purchaser*), by the direction of A. B., of, &c. (*Tenant for Life*) (the receipt whereof is hereby acknowledged), the said A. B. [As Beneficial Owner (c)] hereby transfers to the said X. Y. in fee simple the land, &c. [And the said A. B. hereby declares that, as regards the remainder expectant on his life estate in the land, his covenants for title implied by law shall not extend to the acts or defaults of any person other than himself and persons claiming, or to claim, under or in trust for him : AND ALSO

[Declaration as to covenants for title.]

(b) It is assumed that the tenant for life is also the registered proprietor. This Precedent should not be used alone unless the settlement is made after the date of first registration, or unless the title registered is absolute. The parts in square brackets will come out if a conveyance off the register is used.

(c) See notes to Prec. I. of this Section, *sup.*

that his liability under the said covenants shall not be limited or affected by section eighteen, &c. (*continue as in Precedent I. of this Section*).]

(*Execution and Attestation.*)

## No. IX.

### DEED OF CONVEYANCE *by* TENANT *for* LIFE *where the* SETTLEMENT *was made prior to* FIRST REGISTRATION *and* INSTRUMENT *of* TRANSFER.

#### 1. DEED OF CONVEYANCE.

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*Tenant for Life, or person having the powers of a tenant for life, and registered proprietor (d)*] (hereinafter called the Vendor), of the 1st part, C. D., of, &c., and E. F., of, &c. (*S. L. Act Trustees*) (hereinafter called the Trustees), of the 2nd part, and X. Y., of, &c. (hereinafter called the Purchaser), of the 3rd part :

Recitals of Settlement and of registration of Vendor with possessory title. WHEREAS (*Recite Settlement showing Vendor to be tenant for life in possession and Trustees to be trustees for the purposes of the Acts, see Form No. 10 or 11, Purchase Deeds, Sect. I., p. 294, sup.*).

AND WHEREAS (*Recite registration of Vendor with a possessory title*) :

Of agreement for sale. AND WHEREAS the Vendor, as tenant for life in possession under the said Settlement and as such registered proprietor as aforesaid, has agreed to sell to the Purchaser the hereditaments hereinafter described and the fee simple thereof in possession free from incumbrances at the price of £—— :

Of transfer in prescribed form of even date. AND WHEREAS it is intended that a transfer in the prescribed form of even date herewith shall be executed to enable the Purchaser to be registered as proprietor of the said hereditaments :

NOW THIS INDENTURE WITNESSETH as follows :—

Conveyance. 1. In pursuance of the said agreement and in consideration of the sum of £—— by the direction of the Vendor now paid by the

(*d*) Where the settlement is prior to first registration with a possessory title, it was not absolutely necessary to enter a restriction to protect the settlement (Form 6 or 7 of the Forms annexed to the Rules), but it was always best to do so. Now that incumbrances are to be entered or protected on the register in accordance with the title produced (r. 43), no doubt the restriction will in every case be entered.

Purchaser to the Trustees, as such trustees as aforesaid (the receipt whereof the Trustees hereby acknowledge), the Vendor, in exercise of the power for this purpose conferred on him by the Settled Land Acts, 1882 to 1890, and of every other power enabling him, and As Beneficial Owner, hereby conveys unto the purchaser

ALL, &c. (*see Forms, Purchase Deeds, Sect. II.*).

Parcels.

To HOLD unto and To THE USE of the Purchaser in fee simple, discharged from all the limitations, trusts, powers and provisions of the said Settlement, and from all estates, interests and charges subsisting, or to arise thereunder. Habendum.

2. (*Add proviso qualifying covenants for title, Form No. 1, Purchase Deeds, Sect. III., p. 314.*)

3. (*Add, if required, acknowledgment and undertaking as to title deeds, Form No. 6, Purchase Deeds, Sect. III., p. 317.*)

4. (*Add Form No. 11, Purchase Deeds, Sect. III., p. 321, if the purchase-money does not exceed £500.*)

IN WITNESS, &c. (*e*).

## 2. INSTRUMENT OF TRANSFER.

(*This will be in the same form as Precedent VIII., with the omission of the parts in square brackets.*)

### No. X.

TRANSFER of REGISTERED LAND to TRUSTEES purchasing  
under a POWER in a PERSONALTY SETTLEMENT, and  
DECLARATION of TRUST by SEPARATE DEED (*f*).

## 1. INSTRUMENT OF TRANSFER.

(*Heading and date.*) IN consideration of — pounds (£——) paid to me (the receipt whereof is hereby acknowledged), I,

(*e*) Where there is a lunatic tenant for life his committee will execute in his name under an order: S. L. Act, 1882, s. 62; L. T. Act, 1875, s. 88. Where he is "not so found" then his receiver can make title under Lunacy Act, 1908, s. 1. It is conceived that the receiver would, if necessary, be appointed "guardian" within s. 88 of the Act of 1875. Lunatic tenant for life.

(*f*) Where registered land is purchased by the trustees of a personalty settlement, the land should be transferred to the trustees by an instrument of transfer in the prescribed form so as to make them registered proprietors. If the consent of the husband and wife or any other person is

A. B., of, &c. (*Vendor*), As Beneficial Owner, hereby transfer to C. D., of, &c., and E. F., of, &c. (*Trustees*), in fee simple, the land, &c.:

AND I declare that my liability, &c. (*continue as in Precedent I. of this Section, and add at the end*):

AND we, the said C. D. and E. F., hereby apply for the registration of the following restriction:—

*Restriction.*—Except under an order of the registrar no transfer is to be registered without the consent of G. H., of, &c., and L. H. his wife, or the survivor of them. And no charge is to be registered or valid unless either expressed to be for one of the purposes for which a tenant for life is authorised by law to raise money on mortgage of settled land, the money being paid to the said C. D. and E. F., or in any other case authorised by order of the Registrar.

(*Execution and attestation.*)

## 2. DECLARATION OF TRUST (*g*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, C. D., of, &c., E. F., of, &c. (hereinafter called “the Trustees”), and G. H., of, &c., and L. H. his wife (*the persons whose consent is*

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required to a sale, an application should be made to the registrar under s. 58 of the Act of 1875 to make an entry in the register to the effect that no transfer or charge be made during the lives of A. B. and C. his wife, or the survivor of them, without their, his, or her consent. It is assumed in this Precedent that the trustees for sale are given the statutory powers of a tenant for life, hence have power to mortgage for certain purposes. See prescribed Form S, and as to the effect of the deposit of the certificate, L. T. Act, 1897, s. 8, last paragraph; r. 251. The words “or valid” are added to cover the cases of mortgages by deposit, as they are not “registered.”

(*g*) It is conceived that ss. 30 and 32 of the Act of 1875 must be taken as discharging only the estates and interests affecting the right of disposition of the vendor, and not the trusts affecting the purchasers by reason of the consideration being trust money; however, it is best to have a declaration of trust. The Act (s. 83 (1), as repealed and re-enacted with modifications by the First Schedule of the Act of 1897) does not permit the trust for sale to be disclosed in the transfer, and as the register keeps the trusts of the settlement off the title, there is no need to convey the land on trust for sale.

*required to the investment*), SEND GREETING this — day of — 19— :

WHEREAS these presents are supplemental to an Indenture (hereinafter called the Principal Indenture) dated, &c. (*date and parties*), being a Settlement made on the marriage of the said G. H. and L. H. (then L. R., Spinster) of certain investments and other personal property, and which Indenture contains a power for the Trustees, with the consent of the said G. H. and L. H. or the survivor of them, to purchase hereditaments as therein mentioned, and also a direction that the hereditaments so purchased shall be conveyed to the Trustees on trust to sell the same, but during the lifetime of the said G. H. and L. H. or the survivor of them with their, his or her consent :

Recitals  
of Settlement.

AND WHEREAS under the said power contained in the Principal Indenture the Trustees, with the consent of the said G. H. and L. H. his wife, have agreed to purchase from A. B. certain land in the Parish of —, of which he was registered proprietor under the Land Transfer Acts, 1875 and 1897, for the sum of £— to be raised out of the [husband's or wife's] trust fund :

Purchase by  
Trustees under  
power with  
consent of  
husband and  
wife.

AND WHEREAS in pursuance of the said agreement the Trustees have raised the said sum of £— and paid the same to the said A. B. : And by an instrument of transfer of even date herewith the said A. B., in consideration of the said sum of £—, has transferred the said land to the Trustees, who have applied for the registration of a proper restriction :

Of transfer  
of land to  
Trustees.

NOW THESE PRESENTS WITNESS that in consideration of the premises the said G. H. and L. H. hereby declare that the said land transferred to the Trustees as aforesaid was purchased by the Trustees, with their consent, out of property [the husband's trust fund or the wife's trust fund] subject to the trusts of the Principal Indenture :

Declaration  
of trust.

And the Trustees declare that they will stand possessed of the said land, Upon the trusts and subject to the powers and provisions upon and subject to which the same ought to be held under the Principal Indenture.

IN WITNESS, &c.

## No. XI.

CONVEYANCE *and* TRANSFER *of* registered FREEHOLDS *and*  
LEASEHOLDS *purchased with* CAPITAL MONEY *arising under*  
*a SETTLEMENT of* REAL ESTATE *(h)*.

## 1. CONVEYANCE BY DEED TO USES OF SETTLEMENT.

Parties.

THIS INDENTURE, made the — day of —, 19—, BETWEEN G. H., of, &c. (hereinafter called the Vendor), of the 1st part, C. D., of, &c., and E. F., of, &c. (hereinafter called the Trustees), of the 2nd part, and A. B., of, &c. (*Tenant for Life*), of the 3rd part :

Recital of Settlement.

WHEREAS under an Indenture of Settlement dated, &c., and made, &c., divers freehold hereditaments situated in, &c. (hereinafter referred to as the Settled Freeholds), now stand limited to uses under which the said A. B. is tenant for life in possession, and the Trustees are trustees of the Settlement for the purposes of the Settled Land Acts, 1882 to 1890 :

Of Vendor's title to freeholds.

AND WHEREAS the Vendor is seised in fee simple in possession of the freehold hereditaments hereinafter described free from incumbrances, and is also the registered proprietor thereof with a — title, under the heading District —, Parish —, No. — :

Of Vendor's title to leaseholds.

AND WHEREAS by an Indenture of Lease (*Recite the Lease as in Form No. 28, Purchase Deeds, Sect. I., p. 304, sup.*) :

AND WHEREAS, after divers mesue assignments and acts in the law, ultimately by an Indenture dated, &c., the premises comprised in the recited Lease were assigned to the Vendor for the residue of the said term subject to the said rent, covenants and conditions, and he is the registered proprietor of the said Lease with a — title under the heading District —, Parish —, Title No. — :

Agreement by Tenant for Life to purchase, and direction to trustees to pay purchase-money.

AND WHEREAS the said A. B., as such tenant for life as aforesaid, has agreed with the Vendor for the purchase of the said freehold and leasehold hereditaments for the sum of £—,

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(h) Though the prescribed forms may now be relied on, still, where freeholds and leaseholds are included in one purchase, it will be better to have a conveyance off the register to carry the *ad valorem* stamp, and to show by recitals the position of the parties and the title.

and has directed the Trustees to apply certain capital money in their hands applicable for the purpose in the payment of the said purchase-money :

AND WHEREAS it is intended that by an instrument of transfer in the prescribed form of even date herewith the Vendor shall transfer the said freehold and leasehold hereditaments to the said A. B. to enable him to be registered, but subject to such restrictions as may be necessary for the protection of the persons deriving title under the recited Settlement :

Of intention to transfer freeholds and leaseholds to Tenant for Life in prescribed form.

NOW THIS INDENTURE WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Trustees by the direction of the said A. B. to the Vendor (the receipt whereof the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby conveys unto the Trustees

Conveyance.

ALL, &c. (*freehold parcels as described on the register*),

To HOLD unto the Trustees in fee simple, To THE USES, Upon the trusts, and subject to the powers and provisions which, under the recited Settlement or by reason of the exercise of any power of charging therein contained, are now subsisting and capable of taking effect with respect to the Settled Freeholds, but not so as to increase or multiply charges or powers of charging.

2. For the consideration aforesaid the Vendor, As Beneficial Owner, hereby assigns unto the Trustees

Assignment.

ALL the premises comprised in and demised by the recited Lease,

Parcels.

To HOLD unto the Trustees for the residue of the term granted by the said Lease, subject to the rent thereby reserved and to the covenants and conditions therein contained and on the lessee's part to be observed and performed, but UPON TRUSTS and subject to powers and provisions corresponding as nearly as the law and circumstances permit, with the uses, trusts, powers, and provisions which, under the recited Settlement or by reason of the exercise of any power of charging therein contained, are now subsisting or capable of taking effect with respect to the Settled Freeholds, but not so as to increase or multiply charges or powers of charging : AND so that the beneficial interest in the said leasehold hereditaments shall not vest absolutely in any person who by the said Settlement is made tenant in tail [male or in tail] by purchase, and who shall die under the age of twenty-one years, but shall on the death of such person under

Habendum.

that age devolve as if they were freehold hereditaments and were settled accordingly (i).

3. (*Add covenant by A. B. during his life to pay rent and indemnify, &c., Form No. 5, Purchase Deeds, Sect. III., p. 316.*)

4 (*Also, if required, acknowledgment and undertaking by Vendor to the Trustees as to title deeds, Form No. 6, Purchase Deeds, Sect. III., p. 317.*)

5. (*Also Form No. 11, Purchase Deeds, Sect. III., p. 321, if the purchase-money does not exceed £500.*)

IN WITNESS, &c.

## 2. INSTRUMENT OF TRANSFER OF FREEHOLDS (k).

(*Heading.*)

Transfer by  
Vendor to  
Tenant for  
life.

(*Date.*) IN consideration of — pounds (£—) paid out of capital money arising under a Settlement dated, &c., and made, &c., under which A. B., of, &c., is Tenant for Life under the Settled Land Acts, 1882 to 1890, and C. D., of, &c., and E. F., of, &c., are the Trustees for the purposes of the same Acts, I, G. H., of, &c. (*Vendor*) [hereby acknowledge the receipt of the said sum and], with the consent of the said A. B., hereby [As Beneficial Owner] transfer to him [in fee simple] the land comprised in the title above referred to,

To hold to the Uses, on the Trusts, and subject to the powers and provisions which under the Settlement or by reason of the exercise of any power of charging therein contained are subsisting or capable of taking effect with respect to the freehold settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging:

[*Add Form No. 11, Purchase Deeds, Sect. III., p. 321, if required.*]

Application by  
Trustees to  
have restric-  
tion and inhibi-  
tion entered  
on register.

AND we, the said C. D. and E. F., hereby apply for the registration of the following restriction:—

(i) This is the old form (following S. L. Act, 1882, s. 24) of conveying leaseholds on corresponding trusts. If the modern form is prescribed by the settlement, then this trust must be varied.

(k) The prescribed Form 22 is varied by prescribed Form 25 where there is a purchase with capital money. The parts in square brackets will be omitted if a deed off the register is used. If there is no deed off the register the transfer should be executed in duplicate. Also in that case this and the next Precedent should be consolidated into one instrument; the registered headings of both the freehold and leasehold titles should be placed at the top.

Variations  
where no deed  
off the register  
is used.

*Restriction.*—Except under an order of the registrar no transfer of the land is to be registered unless made on sale, exchange or partition, the consideration money being paid to C. D., of, &c., and E. F., of, &c., or the survivor of them, or into Court, and except under a like order no charge is to be registered or valid unless expressed to be for one of the purposes for which a tenant for life is authorised by law to raise money on mortgage of settled land, the money being paid to or by the direction of C. D. and E. F. or the survivor of them (*l*).

### 3. INSTRUMENT OF TRANSFER OF LEASEHOLDS (*m*).

(*Heading.*)

(*Date.*) In consideration, &c. (*as in last Precedent*), I, G. H., of, &c. (*Vendor*), with the consent of the said A. B. [hereby acknowledge the receipt of the said sum and], hereby [As Beneficial Owner] transfer to him the land comprised in the title above referred to for the residue of the term granted by the registered lease,

To hold on the Trusts and subject to the powers and provisions corresponding as nearly as the law and circumstances will permit, with the uses, trusts, powers, and provisions which under the Settlement or by reason of the exercise of any power of charging therein contained are subsisting or capable of taking effect with respect to the settled freehold land, but not so as to increase or multiply charges or powers of

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(*l*) This restriction does not quite follow the prescribed Form No. 7, and should therefore be submitted to the registrar for approval. Form No. 7 does not allow for a partition: S. L. Act, 1882, s. 3 (iv.). This is necessary in the case of an undivided share. Money raised for discharge of incumbrances is paid by the direction of the trustees.

To prevent any doubt (see Act of 1897, s. 6 (8)), it seems best expressly to provide against the case of a mortgage by deposit by adding the words "or valid," see r. 251.

Where s. 39 (1) of the S. L. Act, 1882, is negatived either by the settlement or by virtue of ss. 20, 22 of the Trustee Act, 1893, it would seem correct for the restriction to enable the survivor of the trustees to receive the capital money.

(*m*) If a deed off the register is used, the words in square brackets may be omitted. If no deed off the register is taken, then the transfer should be executed in duplicate. If freeholds and leaseholds are purchased at the same time, one transfer should be made to apply to both. The two title numbers should be referred to in the heading, and the appropriate numbers in the two operative parts.

charging, so, nevertheless, that the beneficial interest in the land shall not vest absolutely in a person who is by the Settlement made by purchase tenant in tail, or in tail male (or in tail female), and (*n*) who dies under the age of twenty-one years, but shall on the death of that person under that age go as freehold land conveyed as aforesaid would go:

AND we, the said C. D. and E. F., hereby apply, &c. (*continue as in the foregoing transfer of freeholds*).

## No. XII.

### TRANSFER of REGISTERED LAND for BUILDING purposes, RESTRICTIVE CONDITIONS being newly imposed.

(*Same as Precedent I. of this Section, down to and including "the title above referred to," and adding "subject to the following conditions (namely)."*)

(*Set out restrictive conditions.*)

AND I, the said A. B., hereby declare that my liability, &c. (*continue as in Precedent I. of this Section, and add at the end*):

AND I, the said C. D., for myself and my assigns, hereby covenant (*o*) with the said A. B., and the owners and occupiers for the time being of the — Estate, that I and my heirs and assigns will at all times observe the restrictive conditions subject to which the above transfer is made.

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(*n*) This is the old form. If the settlement otherwise provides, this must be varied.

(*o*) It is apprehended that, having regard to rr. 98 and 341, the registrar will make no objection to the insertion of these covenants. The mere transfer subject to restrictions is not sufficient to impose a restriction, see, *Will's v. St. John*, 1910, 1 Ch. 325; 79 L. J. Ch. 239; nor is the entry of the conditions sufficient to constitute a building scheme: S. C. The purchaser must covenant for himself and his assigns.

If a separate deed of covenant (see next Precedent) is not entered into, the transfer should be taken in duplicate.

No. XIII.

CONVEYANCE *and* TRANSFER *of* REGISTERED LAND *with*  
COVENANTS *as to* BUILDING *and* USER, *some being* POSITIVE  
*and some* RESTRICTIVE.

1. CONVEYANCE BY DEED.

THIS INDENTURE, made the — day of —, 19—, BETWEEN Parties.  
A. B., of, &c. (hereinafter called the Vendor), of the one part, and  
C. D., of, &c. (hereinafter called the Purchaser), of the other part:

WHEREAS the Vendor, being seised in fee simple in possession Recital of  
free from incumbrances, and also being the registered proprietor seisin and  
with a — title under the Land Transfer Acts, 1875 and 1897, agreement  
of the land hereinafter described (with other land) under the to sell.  
heading District —, Parish —, Title No. —, has agreed to  
sell the same to the Purchaser for a like estate in possession free  
from incumbrances at the price of £—, subject to the conditions  
as to building and user mentioned in the Schedule hereto:

AND WHEREAS it is intended that these presents shall be Of intended  
accompanied by an instrument of transfer in the prescribed form instrument of  
so as to enable the Purchaser to be registered as proprietor of transfer and  
the land hereinafter described, subject to the conditions men- application  
tioned in the second part of the Schedule hereto: to registrar  
to annex  
restrictive  
conditions.

NOW THIS INDENTURE WITNESSETH, &c. (*Conveyance in Conveyance.*  
*the ordinary form from Vendor to Purchaser in fee*):

AND the Purchaser, for himself and his assigns, hereby Covenant by  
covenants with the Vendor, his heirs and assigns, and the owners Purchaser.  
and occupiers for the time being of the — Estate, that the  
Purchaser and the persons deriving title under him will at all  
times hereafter observe and perform all the conditions and  
stipulations mentioned in the Schedule hereto.

(*Add Forms Nos. 6 and 11, Purchase Deeds, Sect. III., pp. 317,*  
*321, and other special provisions, if required (oo) .*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

THE FIRST PART (*to comprise such of the conditions as are not*  
*restrictive and cannot be made to run with land in equity*).

THE SECOND PART (*to comprise the restrictive conditions*).

(oo) For another form of a conveyance containing full restrictive covenants,  
see Purchase Deeds, Building Estates, Group C., Prec. III., p. 567, *sup.*

## 2. INSTRUMENT OF TRANSFER.

Transfer to  
Purchaser  
subject to  
conditions.

(*Heading and date.*) In consideration of — pounds (£—),  
I, A. B., of, &c., hereby transfer to C. D., of, &c., the land, &c.,  
subject to the following restrictive conditions (namely):—

(*Set out conditions, which will be a copy of the second part of the  
schedule to the Deed of Conveyance.*)

## No. XIV.

## EXCHANGE of REGISTERED LAND.

Mutual  
transfer by  
exchanging  
parties.

(*Heading (p) and date.*) IN consideration of the transfers here-  
inafter contained, and (*if so*) of — pounds (£—) paid  
to A. B., of, &c., by C. D., of, &c., for equality (the receipt  
whereof is hereby acknowledged), the said A. B. hereby, As  
Beneficial Owner, transfers to the said C. D. in fee simple  
the land shown and edged with red on the accompanying  
plan signed by the said A. B. and C. D. [*or the plan  
attached hereto or indorsed hereon*] and described in the  
first Schedule hereto: And the said C. D. hereby, As Bene-  
ficial Owner, transfers to the said A. B. in fee simple the  
land shown and edged with green on the same plan, and  
described in the second Schedule hereto: AND (*if so*) the  
said A. B. applies to have the said land edged with green  
added to the land comprised in title No. —, of which he  
is the registered proprietor; and the said C. D. applies to  
have the said land edged with red added to the land comprised  
in title No. —, of which he is the registered proprietor:

Applications  
for necessary  
entries on the  
register.

Implied cove-  
nant for title  
not to be  
affected by  
s. 18 of Act.

AND the said A. B. and C. D. respectively declare  
that their respective liabilities under the covenants for  
title implied by law shall not be limited or affected by  
section eighteen, &c. (*continue as in Precedent I. of this  
Section and add schedules.*)

(*Execution and attestation.*)

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(*p*) See prescribed Form 42 and notes thereto. If preferred, the trans-  
action may be carried out by two instruments, but if only one is used, it  
seems the heading should refer to both registered titles.

## No. XV.

PARTITION *of* REGISTERED LAND *by* THREE CO-PROPRIETORS *or* TENANTS IN COMMON (*q*).

(*Heading and date.*) EACH of them, A. B., of, &c., C. D., of, &c., and E. F., of, &c., As Beneficial Owner, hereby transfers the respective lands shown and edged with red, green, and yellow on the plan attached hereto [*or* indorsed hereon] and described in the first, second, and third Schedules hereto, to the said A. B., C. D., and E. F. separately and respectively in fee simple:

Mutual transfer to carry partition into effect.

AND the said A. B. and C. D. respectively acknowledge the receipt from the said E. F. of — pounds (£—) and — pounds (£—) paid by him to them respectively for equality of partition.

## FIRST, SECOND, AND THIRD SCHEDULES.

(*Execution and attestation.*)

## No. XVI.

CLAUSE *to be inserted in* MORTGAGES *to prevent the* MORTGAGOR *from* REGISTERING *the* EQUITY OF REDEMPTION *under the* LAND TRANSFER ACTS.

THE Borrower, for himself and the persons deriving title under him, hereby covenants with the Mortgagees and with each of them that so long as any money remains owing on this present security no persons or corporations shall, without the previous consent in writing of the Mortgagees or the persons deriving title under them, be registered as proprietors under the Land Transfer Acts, 1875 and 1897, or any Act consolidating or amending the same, of the premises hereby mortgaged or any part thereof, and that the Mortgagees, or any persons deriving title under them, shall, at the cost of the Borrower or the persons deriving title under him, be entitled from time to time to lodge a caution against the first registration of the premises or any part thereof (*r*).

Covenant not to register and authority to lodge caution against registration.

(*q*) See and compare prescribed Form 43 and notes thereto.

(*r*) It is desirable in all mortgages of unregistered land in a compulsory district that this covenant should be used, because if the equity of redemption is registered the mortgagee, when exercising his power of sale, must

As to the Covenant not to register.

## No. XVII.

APPLICATION *to* REGISTER *a* RESTRICTION.

(Rule 240, Form 64.)

*Land Registry.*

Land Transfer Acts, 1875 and 1897.

Form of application to register a restriction to protect the legal estate conveyed by a mortgage off the register or by a registered charge.

District ——.   
 Parish ——.   
 No. of title —.

(*Date.*) A. B., of, &c. (*the registered proprietor*), hereby applies to the registrar to enter the following restriction against the title above referred to : EXCEPT (s) under an order of the

What the mortgagee should insist on when assenting to the registration of the equity of redemption.

proceed under rr. 151 and 152, as he is bound under s. 16 of the L. T. Act, 1897, to obtain the registration of the purchaser. It follows that before a mortgagee gives his consent to the registration of the equity of redemption he should, if the registration is with an absolute title, require his mortgage to be registered under rr. 175—177 ; this will, according to the practice at the Registry, give him the same power of sale for purposes of registered dispositions (L. T. Act, 1875, s. 27) as if he were the proprietor of a registered charge. If the registration is with a possessory title, then the mortgagee should require that a charge be registered in his favour so as to give effect to his mortgage and give him a power of sale on the register; the stamp on this charge will not exceed 10s.: Revenue Act, 1903, s. 7. In either case the mortgagee should insist on having his legal estate or legal term protected by the usual restriction or notice under L. T. Act, 1875, s. 50.

Special case in which the covenant not to register is essential.

Where land is in a compulsory area, but the registration of title is evaded or postponed—for instance, on account of the vendors agreeing to advance part of the purchase-money and take back a mortgage—here the legal estate never passes out of the vendors by their conveyance to the purchaser, but it would pass to him when he registered, and the mortgage back to the vendors could not operate on the legal estate; hence it is essential to them that the purchaser should not register. If they subsequently assent to the registration, they must insist on getting back the legal estate as well as the other matters above mentioned.

Restriction to protect legal mortgage of freeholds.

(s) This is the form of restriction usually adopted to protect a legal mortgage of freeholds where a charge is also registered; the restriction, when entered, will refer to the charge by number. The object is to prevent the proprietor of the land or of a subsequent registered chargee under his over-riding power of disposition from defeating the legal estate of the first mortgagees without their being able to make arrangements for

registrar, no transfer by the proprietor of the land or made in exercise of the power of sale in any charge subsequent to the charge dated, &c., and presented for registration herewith, is to be registered without the consent of the proprietor for the time being of the said charge, dated, &c.

*(Signature of applicant or his solicitor.)*

### No. XVIII.

AGREEMENT to CONSENT to DEALINGS with the EQUITY OF REDEMPTION in REGISTERED LAND where a RESTRICTION has been REGISTERED to PROTECT a MORTGAGE off the REGISTER.

AN AGREEMENT, made, &c., BETWEEN C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the one part, and A. B., of, &c. (hereinafter called the Borrower), of the other part:

WHEREAS (*Recite the legal Mortgage* (hereinafter called the Principal Indenture) *to the Mortgagees, and the further assurance, if any, of the legal estate, the registration of the restriction (see last Precedent), and the registration of the charge in favour of the Mortgagees*):

Recitals of Mortgage, restriction and registered charge.

AND WHEREAS the Borrower applied for the registration of such restriction on the terms that the Mortgagees should enter into such agreement as is hereinafter contained:

Agreement to define rights under the restriction.

NOW THESE PRESENTS WITNESS and it is hereby agreed as follows:—

1. IN case the Borrower or other the persons for the time being entitled to transfer the said registered land on the register shall execute a transfer of the said land or any part thereof not for valuable consideration so that such transfer when registered

Mortgagees to consent to all voluntary transfers.

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getting back the legal estate as soon as the transfer for value which displaces the estate is registered. Whether the legal estate is conveyed by a deed off the register or by the registered charge, the conveyance takes effect under s. 49 of the L. T. Act, 1875, hence requires the protection of a restriction. The fee for registration of a restriction is 10s. : L. T. Fee Order, 1908, clause (J) (3).

shall not be capable of defeating the legal estate in the land which is then vested in the Mortgagees or the persons deriving title under them, then and in every such case the Mortgagees or the persons deriving title under them shall be bound, at the cost of the person requiring the same, to consent to the registration of such voluntary transfer, provided that the said restriction shall be allowed to remain in force against the persons registered as proprietors of the land pursuant to any such transfer, or that if necessary a new restriction shall, at the cost of the persons requiring such consent, be forthwith registered corresponding with the restriction which is withdrawn.

The terms on which the Mortgagees are to consent to transfers for value which defeat the legal estate.

2. WHERE the transfer is for value (and whether executed by the proprietors of the land or by any chargee whose charge is subsequent to that of the Mortgagees under his power of sale), then the Mortgagees or the persons deriving title under them may, as a condition to giving such consent as aforesaid, require that immediately after the registration of the transferees or purchasers as proprietors of the land the legal estate therein be at the expense in all respects of the persons requiring such consent conveyed to the Mortgagees in fee simple, subject to the right of redemption for the time being subsisting under the Principal Indenture, and that (at the like expense) a new restriction shall (if necessary) be registered corresponding with the restriction which is withdrawn, and save as regards the aforesaid condition the Mortgagees or the persons deriving title under them shall be bound to consent to the registration of a transfer for value in like manner as in the case of a voluntary transfer.

Agreement not to be binding on Mortgagees after equity of redemption is gone.

3. If and when by reason of foreclosure or the exercise of the statutory power of sale or otherwise the right of redemption under the Principal Indenture and the said charge registered for giving effect thereto shall have become barred, these presents shall cease to be binding on the Mortgagees or the persons deriving title under them in respect of all or part of the said registered land as the case may require.

AS WITNESS, &c. (t).

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(t) In some cases mortgagors object to apply for the registration of the restriction (see last Precedent) necessary to protect the legal estate; the object of this Precedent is to remove any cause for maintaining the objection, either by the mortgagors or any intending subsequent chargee.

## No. XIX.

## APPLICATION to REGISTER NOTICE of a LEASE.

(Rules 201 to 206.)

*Land Registry.*

Land Transfer Acts, 1875 and 1897.

District —.

Parish —.

No. of Title —.

Form of application to enter notice of a Mortgage term whether created by a deed off the register or included in a registered charge.

WE, A. B., of, &c., and C. D., of, &c. (*the Mortgagees*), hereby apply for registration of notice of the accompanying Lease (*u*), dated the — day of —, 19—, BETWEEN — and —, for — years less — days from the — day of —, 19— : AND I., E. F., of, &c. (*the registered proprietor of the land*), hereby consent to the above application.

Signatures of applicants )  
or their solicitor. )

Signature of proprietor )  
of land. )

(*u*) This form can also be used with slight variations for several leases granted on the same day for the same term and to the same person.

The lease may, as contemplated in this form, be the mortgage which creates a term or sub-term. Wherever the mortgage security consists of a term, it is better to enter up notice under s. 50 of the L. T. Act, 1875, than to register a restriction. The mortgage term, whether contained in a mortgage deed off the register or in the instrument of charge, takes effect under s. 49 of the L. T. Act, 1875. For the fee payable in respect of the notice, see the L. T. Fee Order, 1908, clause (E); if, as is usual in order to obtain a power to dispose of the land by registered disposition, a charge is to be registered as well as the notice, then they should both be delivered for registration at the same time, in which case the fee for the notice will not exceed 10s.: *ib.* If a mortgage term only is sold it seems that, though the land is registered, the purchaser cannot under L. T. Act, 1897, s. 16 insist on being registered as proprietor: *Re Foss* (1910), 55 Sol. J. 12.

Notice to protect Mortgage term.

Sale of Mortgage term.

## No. XX.

MORTGAGE of FREEHOLDS *where the MORTGAGOR is bound to REGISTER under THE LAND TRANSFER ACTS and the MONEY is to be ADVANCED before REGISTRATION OF TITLE is completed (w).*

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part :

Recitals.

Of "the Conveyance" on the sale on which the compulsory provisions took effect.

WHEREAS (*x*) by an Indenture of Conveyance (hereinafter called the Conveyance) dated the — day of —, 19—, and made between G. H. (*Tenant for Life*), of the 1st part, J. K., of, &c., and L. M., of, &c. (*Settled Land Act Trustees*), of the 2nd part, and the Borrower of the 3rd part, the land and hereditaments hereinafter described were in consideration of a sum of £— paid by the Borrower as therein mentioned conveyed to him in fee simple :

Agreement for loan.

AND WHEREAS the Mortgagees have agreed to advance to the Borrower the sum of £— upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing :

Agreement to execute registered charge, to register the title, to get in the legal

AND WHEREAS it has been agreed that as further part of the aforesaid security the Borrower should immediately after the execution of these presents execute and deliver to the Mortgagees for registration an instrument of charge (*y*), in the form

(*w*) See Dissertation, p. 1105, *sup.* This is the scheme recommended in the case of freeholds in preference to the deed being executed as an escrow. This Precedent can be adapted by adding special provisions to meet the cases of mortgages to bankers, brewers, &c.

(*x*) This conveyance will be referred to in the charge, which will be executed in the form prescribed under r. 96, and before the land is registered. Hence in this case it is desirable to recite the conveyance in place of seisin. As the sale is assumed to have been made under the S. L. Acts, the compulsory provisions could not be evaded by leaving the legal estate outstanding till the execution of the mortgage.

(*y*) This charge must be delivered for registration on the same day as the application for registration of the land is delivered, and then no fee will be charged for registering the charge: L. T. Fee Order, 1908, r. 8.

prescribed under rule 96 of the Land Transfer Rules, 1903 to 1908, which has been already prepared, and is intended to bear even date herewith, charging the land and hereditaments comprised in the Conveyance with the payment to the Mortgagees on the — day of — next of the principal sum of £ —, with interest thereon at the rate of £ — per cent. per annum, payable half-yearly on the — day of — and the — day of — in every year, and should also apply for and obtain registration under the Land Transfer Acts, 1875 and 1897, of the land and hereditaments comprised in the Conveyance, and should as soon as might be after obtaining such registration convey the legal estate in the same hereditaments To the Use of the Mortgagees in fee simple, subject to the right of redemption for the time being subsisting under these presents, and should also sign and deliver an application (z) to the registrar, which has been already prepared, for the entry of a restriction against the title number of the property to be comprised in the said instrument of charge to the effect following (that is to say):—"Except under an order of the registrar no transfer by the proprietor of the land or made in exercise of the power of sale in any charge subsequent to the recited charge is to be registered without the consent of the proprietor for the time being of the recited charge" (a):

estate, and to apply for restriction.

Form of restriction to protect a legal Mortgage.

AND WHEREAS it has also been arranged that as soon as the said entries have been made the land certificate shall be handed over to the Mortgagees (b):

Agreement to hand over land certificate.

AND WHEREAS it has been agreed that the entire security made up of these presents, the intended registered charge (c), the conveyance of the legal estate hereinbefore referred to, and the deposit of the land certificate, shall be governed by the covenants and provisions hereinafter contained, but without prejudice to the statutory powers implied under the intended registered charge aforesaid:

That in case of conflicting provisions the security is to be governed by this Mortgage.

(z) The application for the restriction must be signed by the mortgagor or his solicitor: see *Prec. XVII., sup.*

(a) In the actual restriction the charge will be referred to by its number.

(b) Though this will mean that the certificate of charge will be in an abbreviated form (r. 259b), still the land certificate will give all material particulars.

(c) All the forms and entries to be made in the register must be agreed with the officers at the Land Registry before completion.

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows :—

Covenant  
to pay.

1. (*Receipt of money advanced and usual covenant to pay principal and interest, Forms Nos. 3, 4, and 6 in Mortgages, pp. 773—4, sup.*)

Conveyance.

2. (*Conveyance of land and usual proviso for redemption, adding at the end that the registered charge is to be discharged and the land certificate handed back, Forms Nos. 8 and 9 in Mortgages, pp. 775—6, sup.*)

Covenants by  
Mortgagor.

3. THE Borrower, for himself and his assigns, hereby covenants with the Mortgagees and with each of them as follows :—

To insure.

(i.) (*To insure against fire, Form No. 19, Mortgages, p. 783, sup.*) ;

To complete  
registration  
proceedings  
and then  
convey the  
legal estate.

(ii.) That the Borrower will forthwith apply for and obtain registration under the Land Transfer Acts, 1875 and 1897, of himself as proprietor with a possessory title of the hereditaments mentioned in the Conveyance, and will at the same time apply for or consent to the registration of the Mortgagees as the proprietors of the said intended registered charge, and also will apply for the registration of a restriction for the protection of the Mortgagees and the persons deriving title under them, so far as practicable, in the form hereinbefore recited : And also will immediately after the registration of the Borrower as such proprietor as aforesaid convey the legal estate in the hereditaments so registered to the Mortgagees in fee simple, subject to the right of redemption for the time being subsisting therein under these presents, and will hand over the land certificate together with the certificate of charge to the Mortgagees ;

Not to exercise  
statutory  
powers so as  
to defeat  
Mortgagees'  
legal estate  
without their  
consent and to  
maintain the  
restriction.

(iii.) That so long as any money remains due under these presents no transfer is to be registered of the freehold hereditaments comprised in the title number under which the hereditaments comprised in the Conveyance shall be registered, or any part thereof, without the consent in writing of the Mortgagees or the persons deriving title under them, and that no charge (other than the intended registered charge aforesaid) is to be registered against the same title number except in such manner that the charge shall be subject to the foregoing restriction, and that the Borrower, or the persons deriving title under him, will at his or their

own cost, if and when required by the Mortgagees or the persons deriving title under them, execute and do all documents, acts and things necessary or proper in order to effect the registration and entry on the register of the above-mentioned instrument of charge and restriction, and to vest the aforesaid legal estate in the Mortgagees: And further, that so long as any money remains owing on the security of these presents the Borrower or the persons deriving title under him will from time to time (if and when occasion requires) and at their own cost apply for any corresponding restriction to be imposed in place of any restriction withdrawn, and for such variations to be made in any subsisting restriction as may be reasonably required.

4. PROVIDED ALWAYS, that section sixteen of the Conveyancing and Law of Property Act, 1881, shall, for the purposes of this security, apply to the land certificate aforesaid as if the same were a document of title within the meaning of that section.

Provision as to production of land certificate.

5. For the consideration aforesaid the Borrower hereby irrevocably nominates and appoints the Mortgagees and each of them and their or his substitute or substitutes to be the attorney and attorneys of the Borrower for all or any of the following purposes (namely):—

Irrevocable power of attorney to Mortgagees to give effect to the Mortgagor's covenants.

(i.) To apply for and obtain registration of the Borrower as proprietor of the hereditaments comprised in the conveyance with either a possessory or absolute title under the provisions of the Land Transfer Acts, 1875 and 1897;

(ii.) To apply for or consent to the registration of the Mortgagees as the proprietors of the charge on the said hereditaments effected by the instrument of charge of even date herewith hereinbefore referred to;

(iii.) To apply for the registration of a restriction for the protection of the Mortgagees or the persons deriving title under them in the form (as nearly as circumstances will permit) hereinbefore mentioned;

(iv.) To give a receipt to the registrar for the land certificate to be granted upon the completion of such registration as aforesaid;

(v.) To sign, seal and deliver, and otherwise perfect any deed of conveyance of the legal estate in the said hereditaments if and when the Borrower shall have been registered

as proprietor thereof as aforesaid, so as to vest the same in the Mortgagees in fee simple subject to the right of redemption subsisting under these presents; and

(vi.) In the name and on behalf of the Borrower, and as his act or deed, to sign or seal any document or do any other act or thing which may be reasonably required by the Mortgagees for giving effect to the purposes aforesaid or any of them.

6. (*Add Forms Nos. 15 and 49, as to regularity of sale and duties on land values, in Mortgages, p. 807, sup.*)

IN WITNESS, &c.

### No. XXI.

#### CONVEYANCE *for* VESTING LEGAL ESTATE *after* REGISTRATION *in* MORTGAGEE *where* outstanding *by* reason of SECTION 20 *of* THE LAND TRANSFER ACT, 1897.

Parties.

THIS INDENTURE (*c*), made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower). of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part:

Recitals.

Of Mortgage  
executed  
before first  
registration.

WHEREAS these presents are supplemental to an Indenture of Mortgage (hereinafter called the Principal Indenture) dated the — day of —, 19—, and made between the same parties as are parties hereto, and in the same order, whereby the land and hereditaments hereinafter described were expressed to be conveyed by the Borrower to the Mortgagees in fee simple by way of mortgage for securing payment by the Borrower to the Mortgagees of a principal sum of £— and interest thereon as

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(*c*) This deed must not be executed until the mortgagor has been registered, and may be indorsed on the last Precedent. Registration takes place, in the case of a possessory title, on the day on which, after the entries, forms and plans, &c., have been settled, the application is made, see rr. 23, 47, 95, 111. The conveyance to the mortgagor is required under r. 19 to be produced before there can be deemed to be a proper application for registration; hence the application cannot be made till the vendors deliver their conveyance, which, of course, they will refuse to do till they get their money. Further, the application without the vendor's consent can only be made after completion, though it can be made on the same day. All the entries, &c., should be agreed on before.

therein mentioned, and whereby the Borrower covenanted that he would forthwith apply for and obtain registration of himself as proprietor with a possessory title of the hereditaments thereby expressed to be conveyed, and would as soon as might be after obtaining such registration convey the legal estate in the same hereditaments to the Mortgagees in fee simple, subject to the right of redemption for the time being subsisting in the same hereditaments under the Principal Indenture :

AND WHEREAS the Borrower was on the — day of —, 19—, registered under the Land Transfer Acts, 1875 and 1897, as first proprietor with a possessory title of the hereditaments expressed to be conveyed by the Principal Indenture under the heading District —, Parish —, Title No. — :

Of first registration of the Mortgagor

AND WHEREAS it is apprehended that by reason of the Borrower having recently purchased the said hereditaments he did not, having regard to section twenty of the said Act of 1897, acquire the legal estate therein until he was registered as such proprietor as aforesaid :

That the legal estate is outstanding by reason of s. 20 of the L. T. Act, 1897.

NOW THIS INDENTURE WITNESSETH that for giving effect to the covenant for that purpose contained in the Principal Indenture (*f*), and in consideration of the premises, the Borrower, As Beneficial Owner, hereby conveys and confirms unto the Mortgagees

Conveyance of legal estate to Mortgagees.

ALL AND SINGULAR the lands and hereditaments expressed to be conveyed by the Principal Indenture and all other (if any) the hereditaments of which the Borrower was registered as such proprietor as aforesaid,

Parcels.

To HOLD unto and To THE USE of the Mortgagees in fee simple, subject [as in the Principal Indenture is mentioned, and] to such right of redemption as would have been subsisting in the premises under the Principal Indenture if the legal estate therein had been vested in the Borrower when the Principal Indenture was executed.

Habendum

IN WITNESS, &c.

(*f*) The case of *Capital and Counties Bk. v. Rhodes*, 1903, 1 Ch. 631; 72 L. J. Ch. 336, does not help; if the conveyance were inserted in the registered charge, it could not pass the legal estate, as the charge is executed before the date of first registration, and the form of the charge (see r. 96 and note to prescribed Form 44) shows this. Wherever inserted, the conveyance can only operate under the L. T. Act 1875, s. 49.

## No. XXII.

MORTGAGE of LEASEHOLD LAND in a COMPULSORY AREA  
about to be REGISTERED (g).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part :

Recitals.

Of the Mortgagor's title to the Lease.

WHEREAS (*Recite the Lease and show if it was not granted to the Borrower that it became vested in him. See Purchase Deeds, Sect. I., Form No. 28, p. 304, sup.*) :

Of the registration of the title of the Mortgagor.

AND WHEREAS the Borrower was, before the execution of these presents, registered as the proprietor of the premises comprised in the said Lease with a possessory title under the Land Transfer Acts, 1875 and 1897 :

Of agreement for advance.

AND WHEREAS (*Recite Agreement for advance, Form No. 2A, Mortgages, p. 773, sup.*) :

Of the registered charge under r. 96 (h).

AND WHEREAS by an instrument of Charge dated, &c., the Borrower charged the premises comprised in the recited Lease [*or assignment*] with the payment on the — day of — to the Mortgagees of the sum of £—— and interest as therein mentioned :

Of the application under L. T. Act, 1875, s. 50, to register notice of the Mortgage term.  
Land certificate to be handed over.

AND WHEREAS the Borrower has agreed to consent to an application (i) for the registration of notice under section fifty of the Land Transfer Act, 1875, of the sub-term hereby created :

AND WHEREAS it has been agreed that the land certificate shall be issued and delivered to the Mortgagees :

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(g) See Dissertation, p. 1102, *sup.* This deed must be executed as an escrow and left undated. It will be “delivered” by the mortgagees’ solicitor, who must also act as agent of the mortgagor, to the mortgagees *after* the date of first registration, when the date will be filled in. This plan has also been adapted to freeholds, but is not in that case recommended.

(h) This charge should be “delivered” before the date of first registration. The mortgage in this Precedent must, while still an escrow and undated, be produced duly stamped to the registrar to show that the charge is free of duty, and also to support the application under L. T. Act, 1875, s. 50, for notice to be entered of the mortgage term.

(i) See Precedent XIX., *sup.* This application will in fact be made concurrently with the application to register the title. Before the entry is finally made under s. 50 the mortgage deed will again be produced to the registrar after it has been delivered and dated. The conduct of the registration proceedings must be given to the mortgagees’ solicitor.

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows:—

1. In pursuance of the said agreement and in consideration, Covenant to pay.  
&c. (*Receipt for advance and usual covenant to pay principal and interest, Forms Nos. 3, 4, and 6, Mortgages, pp. 773—4, sup.*).

2. For the consideration aforesaid (*usual sub-demise by the Borrower of the premises to the Mortgages, subject to a proviso for redemption. There is no need in this case for an irrevocable power of attorney to get in the nominal reversion, but a power to appoint new trustees and remove the Borrower from being a trustee may be added. The power of sale conferred by the charge will get in the head term. See Forms Nos. 11, 11A, 11B, pp. 777—8, and Nos. 9, and 9B, pp. 775—6, in Mortgages.*) Sub-demise of premises in the Lease subject to a proviso for redemption.

3. (*Add Forms Nos. 15 and 49, and any requisite special provisions.*)

IN WITNESS, &c.

### No. XXIII.

#### INSTRUMENT of CHARGE (*k*).

(*Heading and date.*) In consideration of — pounds (£—) Consideration.  
paid to me (the receipt whereof is hereby acknowledged),  
I, A. B., of, &c., As Beneficial Owner, hereby charge the  
land comprised in the title above referred to with the  
payment to C. D., of, &c. [E. F., of, &c., and G. H., of, &c.], Borrower charges land with principal sum and interest.  
on the — day of — next of the principal sum of £—,  
with interest at £— per cent. per annum, payable half-  
yearly on the — day of —, and the — day of — in  
every year.

AND IT IS HEREBY DECLARED as follows:—(*Insert such of the following provisions as may be required in each case.*) Provisions.

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(*k*) Though it is the practice at the Land Registry to permit the addition of a conveyance of the legal estate to a charge, it seems useless and improper, unless the charge is executed in duplicate so as to enable the chargee to retain the duplicate. In many cases it will be desirable to have a separate deed as well as the charge, but in this Precedent it is assumed that there is no deed off the register. Where there is a deed off the register protected by restriction or notice it is sufficient for the charge to contain such of the special stipulations as affect the chargee's power of sale, right of entry, and right of enforcing principal and interest. The use of duplicates.

For insurance  
against fire.

1. (*To be inserted where a substantial part of the security consists of buildings, Form No. 19, p. 783, Mortgages, or the following:*) THE debtor shall at all times during the continuance of this security keep the messuage and buildings on the land insured against loss or damage by fire in the sum of £—— at least [*or, in a sum equal to three-fourths of the amount required to re-build the same in the case of total destruction*], in the —— Insurance Office or in some other insurance office approved of by the creditor[s], and pay all premiums payable in respect of such insurance within seven days after the same shall become due, and shall on demand deliver [*or produce*] to the creditor[s] the policy of such insurance and the receipt for every such premium.

As to leasing  
powers, &c. (*l*).  
For reduction  
of interest on  
punctual  
payment.

2. (*Use Form No. 41, p. 803, in Mortgages.*)

3. (*Use Form No. 30 or 32 in Mortgages, pp. 794—5 or the following:*) THE interest secured by this charge shall be reduced to £—— per cent. in every half-year in which it is paid within thirty days after it becomes due.

For continuing  
loan for a  
certain term.

4. (*Use Form No. 33, Mortgages, p. 796, or the following:*) No part of the principal money hereby secured shall be called in until the —— day of ——, 19——, unless some half-yearly payment of interest shall fail to be paid within thirty days after it becomes due [*or there shall be a breach of the above provision for keeping the said premises insured against loss or damage by fire or of any statutory obligation*]. But upon any sale made under the statutory power before the said —— day of ——, 19——, the Purchaser shall not be concerned to see or inquire whether such sale is consistent with this provision.

Debtor not to  
be at liberty  
to pay prin-  
cipal before a  
certain day.

5. THE debtor shall not be at liberty to pay off the principal money hereby secured or any part thereof before the —— day of ——, 19——, unless the creditor[s] shall be willing to accept it, nor to pay the same on or after that day without giving the usual six calendar months' notice of intention so to do.

Provision for  
payment of  
principal by  
instalments.

6. (*Use Form No. 24 or 26, Mortgages, pp. 790, 792, or the following:*) If the principal money hereby secured shall be paid by the instalments following (namely), the sum of £—— on the —— day of —— next or within thirty days thereafter, and the sum of £—— on the —— day of —— in every subsequent year or within

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(*l*) The chargee's security being by deed, he will have the statutory powers of leasing if his mortgagor could have exercised such powers. The registered proprietor, as such, has no power to lease, &c.

thirty days thereafter, until the whole of the said principal money shall be paid, and if every half-yearly payment of interest shall be paid within thirty days after it becomes due, and if the above provision for keeping the said premises insured against loss or damage by fire shall be duly observed and performed, then and in such case the creditor[s] shall accept payment of the said principal money by the instalments aforesaid.

7. Upon any sale under the statutory power a purchaser shall not either before or after transfer be concerned to see or inquire whether a case has arisen to authorise the sale, or whether the power is properly or regularly exercised. Regularity of sale.

8. In the foregoing provisions the expressions "the debtor" and "the creditor[s]" mean the said A. B. and the said C. D. [E. F. and G. H.] respectively, and include also, where the context allows, all persons deriving title under them respectively (*m*). Interpretation.

Signed, &c.

#### No. XXIV.

#### INSTRUMENT OF CHARGE (*under Rule 96*) of the WHOLE of the LAND comprised in a CONVEYANCE, LEASE, or ASSIGNMENT.

(*Heading and date.*) In consideration of — pounds (£—) I, A. B., of, &c., hereby charge the land comprised in an Indenture dated, &c., and made, &c. (*Conveyance, Lease, or Assignment*), with the payment to C. D., of, &c., on the — day of —, 19—, of the principal sum of £—, with interest at £— per cent. per annum, payable half-yearly, on the — day of — and the — day of — in every year (*n*). (*Add any special stipulations required.*) Instrument of charge where the land is about to be registered.

Signed, sealed, and delivered by the  
above-named A. B. in the pre-  
sence of

(*m*) Under the present practice almost any provision is allowed to be inserted in an instrument of charge: hence, if desired, the ordinary forms in mortgages can be added. In all cases where the instrument of charge is relied on without a deed off the register a duplicate should be retained by the chargee.

(*n*) See Dissertation, p. 1102 *sup.*, as to evading registration. This Precedent is required when the compulsory provisions cannot be evaded, and

Mode of mortgaging land about to be registered.

## No. XXV.

INSTRUMENT OF CHARGE *of the WHOLE of the LAND  
comprised in a TITLE to secure a current account.*

Instrument of  
charge to  
secure a  
current  
account at  
a bank.

(*Heading and date.*) In consideration of money due and of forbearance to require immediate payment thereof, I, A. B., of, &c. (hereinafter called the Mortgagor), hereby charge the land comprised in the title above referred to with the payment to the — Bank, Limited, whose registered office is at, &c. (hereinafter called the Bank), on demand of the balance (if any) then owing from the Mortgagor on his account current with the Bank for cheques, notes or bills drawn, accepted or indorsed by him, or for advances made to him or for his accommodation or benefit (including interest with half-yearly rests, commission and other customary charges), and with the payment of interest on such balance from the date of such demand or from the death of the Mortgagor (which first happens), at the rate of £— per cent. per annum, with half-yearly rests.

This charge is subject to the following (o) stipulations (that is to say):—

Power of sale.

- (i.) The Bank and their assigns may in favour of a purchaser exercise the power of sale immediately after the registration of this charge.

part of the purchase-money is advanced to enable the purchase to be effected. It seems useless to insert a conveyance of the freeholds or a sub-demise of any leaseholds in the charge, as neither can the legal estate be passed nor a legal term created until the purchaser is registered (L. T. Act, 1897, s. 20; rr. 68—70), and the wording of this charge clearly shows that the purchaser has not been registered. In the case of possessory titles the date of first registration is the date of the application to register, but the application cannot be made until the vendor has delivered the conveyance to the purchaser, and the vendor will refuse to do this till he has received his purchase-money. This Precedent assumes that a proper legal mortgage (see Precs. XX. and XXII.) will be executed off the register, that the legal estate or mortgage term will be got in (see Prec. XXI.) or obtained (Prec. XXII.) after registration, and will be protected by a restriction or notice under s. 50 of the L. T. Act, 1875.

(o) These stipulations should correspond with the provisions of the mortgage deed off the register. The legal mortgage should be protected by a restriction (Prec. XVII.) in the case of freeholds, or by a notice (Prec. XIX.) in the case of leaseholds.

- (ii.) The statutory power of leasing, or agreeing to lease, shall not be exercised without the consent of the Bank (acting by one of their managers) or their assigns, but it shall not be necessary to express such consent in any lease or agreement, nor shall the lessee be concerned to see that such consent is given. Powers of leasing, &c.
- (iii.) This charge is to be a continuing security to the Bank notwithstanding any settlement of account with the persons for the time being liable for the money hereby secured or any part thereof, or that the Bank may accept or have accepted, or may release or have released any other security from or to, or may give time to such persons or any of them, or that the Bank may have made or accepted any other arrangement, and notwithstanding any other act or omission by the Bank in relation to the premises (p). Charge to be a continuing security.

Signed, sealed, and delivered, &c.

#### No. XXVI.

SECOND MORTGAGE *where the LAND is REGISTERED and it is intended ultimately to take a TRANSFER of the FIRST CHARGE and CONSOLIDATE the DEETS.*

THIS INDENTURE, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the 1st part, C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the 2nd part, and G. H., of, &c. (hereinafter called the Receiver), of the 3rd part : Parties.

(p) It is now considered the best practice, unless a duplicate is taken, not to insert a conveyance of the legal estate or a demise of a term in an instrument of charge, first, because, whether inserted in a registered disposition or a deed off the register, the conveyance or demise can only take effect under s. 49 of the L. T. Act, 1875, and this is likely to be overlooked if either are placed in a registered disposition; secondly, because it is inconvenient to have to obtain an order from the registrar every time the deed is required for production; and thirdly, because no saving is effected in stamp duty. In fact, it seems best to keep the registered charge in as simple a form as possible, merely adding stipulations which affect a purchaser under the power of sale or vary the provisions implied under the L. T. Acts, or the rate of interest or time of payment. The real contract between mortgagor and mortgagee is best contained in a mortgage deed in common form, which can be retained in the custody of the mortgagee. Why conveyance of legal estate or demise of a term should not be inserted in registered charges.

Form of charge to be kept as simple as possible.

Recitals.  
Of title of  
Mortgagor  
subject to  
restrictive  
covenants and  
First  
Mortgage.

WHEREAS the Borrower is entitled in fee simple in possession to the hereditaments hereinafter described, subject to certain restrictive covenants hereinafter referred to, and to the First Mortgage hereinafter mentioned, and the Borrower is registered as the proprietor of the said hereditaments with an absolute title under the Land Transfer Acts, 1875 to 1897, under the heading District —, Parish —, Title No. —, subject to the restrictive conditions mentioned in the Register and to the charge, Nod. —, registered against the said title with a restriction for protecting the First Mortgage aforesaid, and the said land certificate is dated the — day of —, 19—:

Of agreement  
for loan.

AND WHEREAS the Mortgagees have agreed to advance to the Borrower the sum of £— upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing:

Of intended  
registered  
charge.

AND WHEREAS, in pursuance of the said agreement and as part of the said security, it has been agreed that the Borrower shall immediately after the execution of these presents execute and deliver to the Mortgagees for registration the instrument of Charge which has been already prepared and is intended to bear even date herewith charging the said freehold hereditaments with the payment to the Mortgagees on the — day of —, 19—, of the principal sum of £—, with interest thereon at the rate of £— per cent. per annum, payable half-yearly on the — day of — and the — day of — in every year:

That the deed  
off the register  
is to govern  
the rights.

AND WHEREAS it has been agreed that the security made up of the said instrument of Charge and these presents shall be governed by the covenants and stipulations herein contained:

NOW THIS INDENTURE WITNESSETH and it is hereby agreed as follows:—

Covenant to  
pay.

1. In pursuance of the said agreement and in consideration of the said sum of £— now paid to the Borrower by the Mortgagees out of money belonging to them on a joint account (the receipt whereof the Borrower hereby acknowledges), the Borrower hereby covenants with the Mortgagees and with each of them to pay, &c. (*Forms Nos. 4 and 6, Mortgages, pp. 773—4.*)

Conveyance  
of equity of  
redemption.

2. For the consideration aforesaid the Borrower, As Beneficial Owner, hereby conveys unto the Mortgagees

Parcels.

ALL THAT piece of freehold land, &c., together with the

messuage, stables and buildings erected thereon known as —, and which premises are comprised in the land certificate Nod. — aforesaid and are more particularly delineated on the plan attached thereto and therein edged red,

*Habendum.*

To HOLD unto and To THE USE of the Mortgagees in fee simple, subject to the restrictive covenants affecting the premises, to which effect is given by the restrictive conditions contained in the said land certificate, and to an Indenture of Mortgage (in these presents called the First Mortgage), dated the — day of —, 19—, and made between the Borrower of the one part and X. Y., of the other part, whereby the premises were conveyed to the said X. Y. in fee simple for securing payment to him of the sum of £— and interest thereon, and also to the charge (hereinafter called the First Charge) registered for protecting the said sum of £— and interest as aforesaid and to the usual restriction registered for protecting the First Mortgage, And also subject to the proviso for redemption hereinafter contained (that is to say) :—It is hereby provided that on payment on the — day of — next by the Borrower or the persons deriving title under him of the sum of £—, with interest thereon from the date hereof at the rate aforesaid, the premises hereinbefore conveyed shall, at the request and cost of the Borrower or the persons deriving title under him, be duly reconveyed to him or them, and the said intended registered charge shall at the like request and cost be duly discharged.

*Proviso for redemption and for discharge of registered charge.*

3. (i.) In consideration of the premises the Borrower, with the privity of the Mortgagees, hereby irrevocably appoints the Receiver to be receiver and attorney of the Borrower from time to time in the name or names of the Borrower or the persons deriving title under him, or otherwise to receive the rents and profits of the premises hereinbefore conveyed.

*Appointment of the Receiver.*

(ii.) THE Receiver shall (subject as hereinafter provided) have, exercise, and perform all the like duties and be entitled to the like remuneration, and be removable and be deemed to be the agent of the Borrower in like manner as well before as after the Mortgagees shall have become entitled to exercise the power of sale conferred by the Conveyancing and Law of Property Act, 1881, as if the Receiver for the time being hereunder had been appointed by the Mortgagees pursuant to that Act (as varied by these presents) after they had become entitled to

*Duties of Receiver.*

exercise the power of sale thereby conferred, and the Receiver may accordingly act as from the date hereof, and may be removed by the Mortgagees and a new receiver appointed from time to time as if the statutory power of sale had arisen and the provisions of section twenty of the said Act or some of them had been complied with.

Powers of  
receiver.

(iii.) THE Receiver for the time being may exercise the powers conferred by section twenty-four, sub-section (7), of the said Act without any further consent of the Mortgagees, and may make such allowances and arrangements with tenants and occupiers, and may give notices to quit and bring and take actions or proceedings for ejectment or recovery of possession of the premises on the expiration or determination or forfeiture of any tenancy or otherwise, and may let or relet premises or any part thereof from time to time to such person or persons as he shall think fit on yearly, monthly, or weekly tenancies at the best rent which may be reasonably obtained.

Sinking fund.

(iv.) AFTER making the payments directed or authorised by sub-clauses (i.) to (iv.), inclusive of sub-section (8) of section twenty-four aforesaid, including the cost of executing necessary or proper repairs, without any further direction in writing by the Mortgagees, the Receiver for the time being hereunder shall pay the residue of the money received by him to the joint account of the Mortgagees at Messrs. — Bank at —, or to some other bank to be approved by them, to provide a sinking fund for payment of any interest which may thereafter become due to them under this security, and the Receiver shall have power to draw against that fund for the purpose of making any other payments authorised or required to be made under the said sub-clauses (i.) to (iv.) of section twenty-four aforesaid, and the Mortgagees may from time to time draw out of such fund any sum or sums in or towards discharge of any principal money and interest for the time being owing on the security of these presents, provided that it shall not be obligatory upon the Mortgagees to draw out of the said fund any sum or sums towards discharge of the principal money and interest until the sum drawn will be sufficient to satisfy all principal money, interest and costs for the time being secured by these presents, and until the Borrower shall give to the Mortgagees at least six calendar months' notice requiring such drawing to be made.

(v.) SUBJECT as aforesaid, and to the payment of all principal money, interest and costs hereby secured, the said sinking fund and the interest (if any) thereon shall belong to the Borrower.

4. Provided always that upon any sale, &c. (*Form No. 15 in Mortgages, p. 781, sup.*).

5. (*The Borrower not to exercise leasing powers, &c., without consent, Form No. 41 in Mortgages, p. 803, sup.*).

6. The Mortgagees or the persons deriving title under them shall not be answerable for any involuntary loss which may happen in or about the exercise of any of the powers and trusts which may be vested in them by virtue of these presents or under any statute.

Involuntary losses.

7. THE Borrower hereby covenants with the Mortgagees, and with each of them, in manner following (that is to say) :—

Covenants by Mortgagor.

(i.) (*To insure against fire, Form No. 19, Mortgages, p. 783 sup.*).

To insure.

(ii.) That the Borrower will forthwith execute and deliver the said Charge intended to be registered by way of further security for the principal money and interest hereby secured, and will at his own cost do all things necessary or proper for enabling the said Charge to be registered, subject only to the said restrictive conditions, the First Charge and restriction.

To execute and deliver registered charge.

(iii.) That so long as any money remains owing on the security of these presents the Borrower or the persons deriving title under him will, immediately upon being requested by the Mortgagees or the persons deriving title under them so to do, at his own cost give notice to the persons for the time being interested in the First Charge, stating that the principal money and interest thereby secured will be paid off within six calendar months from the date of the notice, or the service thereof, in the usual way, and will at the like cost require the persons so interested to transfer the First Mortgage and the First Charge to the Mortgagees or the persons deriving title under them, who shall in that case advance the money required for taking such transfer, and will at the like cost execute and do all deeds and things necessary or proper for enabling the Mortgagees or the persons deriving title under them to be registered as

To give notice to pay off First Mortgage when required, and to have same transferred to Second Mortgagees, and to consolidate the debt.

proprietors of the First Charge and acquiring the benefit of the said restriction, and for consolidating the money respectively secured by the First Mortgage, the First Charge, and these presents into one aggregate sum, carrying interest at the rate of £— per cent. per annum, and for applying the provisions herein contained to such consolidated security, and will in like manner and at the like cost use his best endeavours to have the Mortgagees or the persons deriving title under them registered as proprietors of a first charge for securing the consolidated debt.

(iv.) Upon such transfer of the First Charge as aforesaid, the Borrower or the persons deriving title under him will require the land certificate to be handed over to the Mortgagees or the persons deriving title under them.

(v.) (*Add Form No. 49, Mortgages, p. 807, sup., as to duties on land values*).

8. For the consideration aforesaid the Borrower hereby irrevocably appoints the Mortgagees, and the persons deriving title under them, and each of them and their or his substitutes or substitute, to be his attorneys or attorney in his name and on his behalf, and as his act or deed to give any such notice for payment off of the First Mortgage and the First Charge, to join in any such transfer as aforesaid, to apply for any modification or renewal of the said restriction which may be required, and to do any other act or thing which may be reasonably required for getting in and consolidating the said security, and for enabling the Mortgagees or the persons deriving title under them to perfect their title by registration as proprietors of the First Charge or consolidated charge aforesaid.

IN WITNESS, &c. (q).

Land certificate to be handed over when transfer taken.

Mortgagees appointed attorneys to effect the consolidation.

Inspection of register and inquiries as to state of mortgage debt.

Power for second mortgagee to enter.

(q) In all cases the mortgagor must give an authority to the mortgagees to inspect the register before the money is advanced. The fact that the title is registered does not do away with the necessity for obtaining information as to the amount due on the first mortgage.

Having regard to L. T. Act, 1875, s. 25, it seems that no express power to take possession (see Form No. 16A in Mortgages, p. 781, *sup.*) is required in the case of a second mortgage of registered land.

## No. XXVII.

SUB-MORTGAGE *of FREEHOLDS and LEASEHOLDS to a*  
*BANK where part of the SECURITY consists of a REGIS-*  
 TERED CHARGE.

THIS INDENTURE, made the — day of —, 19—, BETWEEN Parties  
 A. B., of, &c. (hereinafter called the Borrower), of the one part,  
 and the — Bank, Limited (hereinafter called the Bank), of  
 the other part,

WITNESSETH as follows:—

1. IN consideration of the money now advanced by the Covenant to  
 Bank to the Borrower, the Borrower hereby covenants with pay on  
 the Bank that the Borrower will, on demand in writing signed demand.  
 by any officer of the Bank and sent by post or otherwise to  
 the Borrower at the address for the time being in the books  
 of the Bank, pay to the Bank the balance of the money which  
 may then be due from the Borrower to the Bank on account  
 current for cheques, notes or bills drawn, accepted or indorsed  
 by him, or for advances made to him or for his accommodation  
 or benefit (including interest with half-yearly rests, commission,  
 and other customary charges), and also to pay interest on such  
 balance from the date of demand, or from the death of the  
 Borrower (which first happens), at the rate of £— per cent.  
 per annum, with half-yearly rests.

2. FOR the consideration aforesaid the Borrower, As Beneficial Transfer of  
 Owner, hereby assigns unto the Bank the mortgage  
debt subject

ALL THAT the principal sum of £— now owing to the  
 Borrower on the security of the Indenture of Mortgage mentioned  
 in the Schedule hereto (hereinafter called the Principal Inden-  
 ture), and all interest now and henceforth to become due for the  
 same, and the benefit of and right to exercise and enforce all  
 powers and securities for compelling payment of the said sum  
 and interest,

To HOLD unto the Bank absolutely, subject to redemption on  
 payment on demand of the money intended to be hereby secured.

3. FOR the consideration aforesaid the Borrower, As Beneficial  
 Owner, hereby conveys unto the Bank:

Conveyance  
 of the freehold  
 and leasehold  
 security sub-  
 ject to the old

FIRST, ALL the freehold hereditaments and personal property

right of redemption, and to a new proviso.

(other than leasehold hereditaments held for any term of years) comprised in the principal Indenture :

AND SECONDLY, ALL the leasehold hereditaments held for any term of years comprised in the Principal Indenture :

To HOLD, as to the premises first hereinbefore described, unto and To THE USE of the Bank and their assigns in fee simple or absolutely, and as to the premises secondly hereinbefore described unto the Bank for the residue of the term or terms of years created by the Principal Indenture, and with the benefit of all trusts and other provisions relating to the nominal reversion or reversions expectant thereon, but, as to all the premises, subject to such right of redemption as the same are now subject to by virtue of the Principal Indenture, and also subject to redemption on payment on demand of the money intended to be hereby secured.

Provision for redemption.

4. ON payment on demand of all money charges, interest and costs for the time being secured by these presents, the premises hereby mortgaged shall, at the request and cost of the Borrower or the persons deriving title under him, be duly reassured to him or them.

Appointment of substitutes to execute powers of attorney in the Principal Mortgage.

5. THE Borrower hereby irrevocably appoints the Bank or any one of their general managers for the time being, or other nominee of the Bank for this purpose, or the persons who, if the same had become exercisable, would for the time being be entitled to exercise the statutory power of sale implied by these presents, to be the substitute or substitutes of the Borrower for the purpose of exercising any power of attorney created or conferred by the Principal Indenture.

Provisions respecting the registered land and charges.

6. As regards any charge of which the Borrower is registered as proprietor under the Land Transfer Acts, 1875 and 1897, against the title of any freehold or leasehold hereditaments comprised in the Principal Indenture, the Bank shall be entitled at their discretion either to be registered as proprietors of any such charge, or as proprietors of a sub-charge for securing the money intended to be hereby secured, or the amount covered by the stamp duty paid hereon, and in any case shall be entitled to have the custody of the certificate of every such charge, and also (if in the possession of Borrower) of the land certificate or certificates, and may also require all such restrictions, notices and other entries to be made in the register for the protection of

this security as the Bank may think fit: And the Borrower hereby irrevocably appoints the Bank or any one of their general managers for the time being, or other substitute of the Bank for this purpose, to execute and deliver all such transfers, sub-charges and other dispositions, and make all such applications as may be necessary or proper for giving effect to this clause or otherwise protecting this security on the register.

7. THE powers conferred on mortgagees by the Conveyancing and Law of Property Act, 1881, shall apply to these presents with the following variations (namely):—

Provision  
varying the  
powers con-  
ferred by the  
Conv. Act,  
1881.

(i.) In favour of a purchaser the power of sale is to be deemed to be exercisable immediately after the execution of these presents, so as to enable the Principal Indenture to be transferred.

(ii.) Subject as aforesaid, the power of sale shall be exercisable at any time after thirty days next after demand is made for payment of the money hereby secured, but a purchaser shall not either before or after conveyance be concerned to inquire whether demand has been made or the power is properly or regularly exercised.

8. It shall not be obligatory on the Bank or their assigns to sue for or require payment of the said principal sum and interest hereby assigned or any part thereof unless the Bank or their assigns shall think fit so to do, nor shall the Bank or their assigns be responsible for any loss which may arise by reason of the omission or delay of the Bank or their assigns to enforce any of the securities for the said principal sum and interest or any part thereof.

Bank not to  
be bound to  
enforce  
securities.

9. THESE presents shall be a continuing security to the Bank notwithstanding any settlement of account by the Bank with the Borrower or any party liable for the money intended to be hereby secured or any part thereof, and notwithstanding any security or the release of any security which the Bank may take or may have taken from the Borrower or any party liable for the said money or any part thereof, or notwithstanding any time which the Bank may give to the Borrower or to any party liable for the said money or any part thereof for payment, or notwithstanding any arrangement made or accepted by the Bank with or from any party liable for the said money or any part thereof, or notwithstanding any act or omission of the

The Mortgage  
to be a con-  
tinuing  
security.

Bank in relation to the premises or any other matter or thing whatsoever.

10. (*Add Form No. 49 in Mortgages, p. 807, substituting "Bank" for "Mortgagees" and provide that Borrower shall not be liable under this covenant unless possession is taken of the mortgaged land.*)

IN WITNESS, &c. (*r*).

THE SCHEDULE ABOVE REFERRED TO.

(19—.) Indenture of Mortgage of this date (in these presents referred to as the Principal Indenture), made between, &c. (being a mortgage of certain freehold and leasehold hereditaments in the Counties of London and Bucks).

(*Same date.*) Charge (*s*) of this date, Nod. —, and registered against the title under the heading District London, Parish —, No. — (being a charge on certain of the freehold hereditaments in the County of London comprised in the Principal Indenture).

No. XXVIII.

INSTRUMENT *of* TRANSFER *of* a REGISTERED CHARGE *for giving effect to* a SUB-MORTGAGE.

Instrument of transfer of a registered charge for giving effect to a Sub-Mortgage.

(*Heading and date.*) In consideration of the sum of — pounds (£—) (*t*), I, A. B., of, &c., hereby transfer to the — Bank, Limited, whose registered office is at, &c., the Charge dated the — day of —, 19—, Nod. —, and registered the — day of —, 19—, of which I am the registered proprietor.

Signed, sealed, and delivered by the  
above-named A. B. in the presence  
of, &c.

(*r*) This Precedent is so framed that it may be readily adapted as a stock form for a bank.

(*s*) This charge should either be transferred or a sub-charge taken, see the next two Precedents.

(*t*) This will be the amount covered by the stamp duty on the sub-mortgage, see last Precedent. Where the sub-mortgage is effected by a conveyance of the land as well as by an assignment of the debt, it is safer to carry out the sub-mortgage on the register by means of a transfer. The registrar will not permit any reference to the right of redemption; the stamp duty will be paid on the sub-mortgage off the register.

## No. XXIX.

INSTRUMENT of SUB-CHARGE of a REGISTERED CHARGE to secure a current account.

(*Heading and date.*) In consideration of the sum of — pounds (£ —) (*u*), I, A. B., of, &c. (hereinafter called the Borrower), hereby charge the Charge dated the — day of —, 19—, Nod. —, and registered the — day of —, 19—, of which the Borrower is the registered proprietor, and the principal money and interest thereby secured, and the full benefit of that Charge, with payment to the — Bank, Limited, of &c. (hereinafter called the Bank), on demand of the balance which may then be due from the Borrower to the Bank on account current for cheques, notes, bills drawn, accepted or indorsed by him, or for advances made to him or for his accommodation or benefit (including interest, with half-yearly rests, commission and other customary charges), and with the payment of interest on such balance from the date of demand, or from the death of the Borrower (which first happens), at the rate of £— per cent. per annum, with half-yearly rests.

This Sub-Charge is subject to the following stipulations (that is to say):—

(i.) The Bank and their assigns may, in favour of a purchaser, exercise the power of sale immediately after the registration of this Sub-Charge so as to enable the above-mentioned Charge to be transferred.

(ii.) It shall not be obligatory on the Bank or their assigns to sue for or require payment of the said principal sum and interest hereby charged, or any part thereof, unless the Bank or their assigns shall think fit so to do, nor shall the Bank or their assigns be responsible for any loss which may arise by reason of the omission or delay of the Bank or their assigns to enforce any of the securities for the said principal sum and interest, or any part thereof.

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(*u*) This will be the amount covered by the stamp duty paid on the sub-mortgage, see last Precedent but one. Where the land as well as the debt has been conveyed by the sub-mortgage, this Precedent should not be used, unless there is some special objection to transferring the charge, see last Precedent.

(iii.) This Sub-Charge is to be a continuing security to the Bank notwithstanding any settlement of account with the persons for the time being liable for the money hereby secured, or any part thereof, or that the Bank may accept or have accepted, or may release or have released any other security from or may give time to such persons or any of them, or that the Bank may have made or accepted any other arrangement, and notwithstanding any other act or omission by the Bank in relation to the premises (x).

Signed, sealed and delivered by the  
 above-named A. B., in the presence  
 of

No. XXX.

APPLICATION to REGISTER a RESTRICTION.

(Rule 240, Form No. 64.)

*Land Registry.*

Land Transfer Acts, 1875 and 1897.

Application to  
 register a  
 restriction  
 against a  
 charge to  
 protect a sub-  
 mortgage off  
 the register.

District—.

Parish—.

No. of Title—.

No. of Charge—.

The — of —, 19—.

A. B., of, &c. [*the registered proprietor of the Charge*], hereby applies to the Registrar to enter the following restriction against the Charge above referred to:—Except under an order of the Registrar, no transfer made in exercise of the power of sale in the above Charge No. —, or in any sub-charge thereof subsequent to the Sub-Charge dated, &c., and presented for registration herewith, is to be registered without the consent of the proprietor for the time being of the said Sub-Charge presented for registration herewith (y).

*Signature of applicant or his solicitor.*

(x) Where a sub-charge is taken in this form, then sub-mortgagees who under the sub-mortgage off the register have acquired a legal estate in the land will require a restriction in the form contained in the next Precedent.

(y) This restriction is only required where the sub-mortgagees have obtained the legal estate off the register, and have only a sub-charge entered on the register, as under the last Precedent.

## No. XXXI.

MEMORANDUM *under HAND, accompanying a DEPOSIT of*  
 LAND CERTIFICATE *or* CERTIFICATE OF CHARGE *to secure*  
*a given SUM and INTEREST (z).*

BE IT REMEMBERED, that I, A. B., of, &c. (*Mortgagor*), have this — day of — deposited with C. D., of, &c. (*Mortgagee*), the land certificate [and title deeds (*a*)] mentioned in the Schedule hereto and relating to freehold land comprised in the title No. —, in the Parish of —, in the County of —, with intent to create a lien on the said land for securing, &c. (*the rest will be the same as Prec. I., Sect. IV., Equitable Mortgages, p. 934, sup., substituting “an instrument of charge” for “a legal mortgage”*).

THE SCHEDULE ABOVE REFERRED TO.

## No. XXXII.

MEMORANDUM *under HAND, accompanying a DEPOSIT of*  
 LAND CERTIFICATE, &c., *with BANKERS to secure*  
 BALANCE *of* ACCOUNT CURRENT.

BE IT REMEMBERED, that I, A. B., of, &c. (*Mortgagor*), have this — day of — deposited with the — Banking Company, Limited, the land certificate [and title deeds (*a*)] mentioned in the Schedule hereto and relating to freehold land comprised in the title No. —, in the Parish of —, in the County of —, with intent to create a lien on the said land for securing the payment to the said Company of the balance, &c. (*the rest will be the same as Prec. IV., Sect. IV., Equitable Mortgages, p. 937, sup., substituting “an instrument of charge” for “a legal mortgage”*).

THE SCHEDULE ABOVE REFERRED TO.

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(z) Act of 1897, s. 8, last paragraph; r. 251.

(a) In the case of a possessory or qualified title, the title deeds should also be deposited.

## No. XXXIII.

NOTICE *of* DEPOSIT *to be sent to* REGISTRAR *(b)*.

I, C. D., of, &c. [*or* We, the — Banking Company, Limited], hereby give you notice that on the — day of —, 19—, A. B., of, &c., deposited with me [*or* us] the land certificate dated, &c. [and title deeds], relating to the land in the Parish of —, in the County of —, title No. —, and I [*we*] request you to enter a note of the same in the Charges Register.

## No. XXXIV.

FURTHER CHARGE *of* REGISTERED LAND.

(*Heading and date.*) In consideration, &c. (*same as Prec. XXIII., of this Section, adding "further" before "principal sum"*):

AND IT IS HEREBY AGREED that the provisions contained in the Charge dated, &c., registered, &c., and Nod. —, shall apply to this Further Charge.

## No. XXXV.

TRANSFER *of* REGISTERED CHARGE *(c)*.

(*Heading and date.*) In consideration of — pounds (£—) paid to me [at the request of A. B., of, &c. (*debtor*)] (the receipt whereof is hereby acknowledged), I, C. D., of, &c., As Mortgagee, hereby transfer to E. F., of, &c., the Charge dated, &c., and registered, &c., of which I am the registered proprietor [together with the sum of £— arrears of interest due under the Charge]:

AND IT IS HEREBY DECLARED that the whole of the principal sum of £— secured by the Charge remains owing, but all interest thereon has been paid up to the date hereof [*or* together with the sum of — pounds (£—), arrears of interest due under the charge].

(*Execution and attestation.*)

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(*b*) See rr. 181, 243–251. A lien may be created before registration by notice of an intended deposit.

(*c*) See prescribed Form 49.

## No. XXXVI.

INSTRUMENT of DISCHARGE AND NEW CHARGE, *where a further sum is advanced to debtor (d).*

(*Heading and date.*) IN consideration of five hundred pounds (£500) paid to C. D., of, &c., and two hundred pounds (£200) paid to A. B., of, &c. (the receipt of which sums is hereby acknowledged), the said C. D. hereby admits that the Charge dated the — day of —, 19—, and registered the — day of —, 19—, of which he is the registered proprietor, has been discharged, and the said A. B., As Beneficial Owner, hereby charges the land, &c., with the payment to E. F., of, &c., on the — day of —, 19—, of the principal sum of £700, &c. (*as in Precedent XXIII. of this Section.*)

(*Execution and Attestation.*)

## No. XXXVII.

DISCHARGE of REGISTERED CHARGE.

(*Heading and date.*) I, C. D., of, &c. (*Mortgagee*), hereby admit that the Charge dated the — day of —, 19—, and registered on the — day of —, 19—, of which I am the registered proprietor, has been discharged.

## No. XXXVIII.

MORTGAGE of REGISTERED FREEHOLD LAND and CHARGE for giving effect to the same on the Register (*e*).

## 1. MORTGAGE.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (herein- Parties.  
after called the Borrower), of the one part, and C. D., of, &c.,

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(*d*) In this Precedent the original charge is not kept alive for the new chargee. If preferred, the discharge may be effected separately, see next Precedent.

(*e*) See Dissertation, *sup.* Upon any transfer of this mortgage, the same deed will have to be executed as if the freehold land were unregistered in

and E. F., of, &c. (hereinafter called the Mortgagees), of the other part :

Recital  
of seisin and  
registration.

WHEREAS the Borrower is seised of the hereditaments herein-  
after described for an estate in fee simple in possession free from  
incumbrances and is registered as the proprietor thereof with a  
—— title under the Land Transfer Acts, 1875 and 1897, under  
the heading District ——, Parish ——, No. of Title — (*f*) :

Of agreement  
for loan.

AND WHEREAS the Mortgagees have agreed to advance to the  
Borrower the sum of £—— upon having the payment thereof,  
with interest, secured in manner hereinafter appearing :

Of registered  
charge.

AND WHEREAS the Borrower has by an instrument of Charge  
dated, &c., charged the land comprised in the said title with the  
payment to the Mortgagees of the sum of £—— and interest as  
therein mentioned (*g*) :

Of application  
for restriction.

AND WHEREAS the Borrower has signed and delivered an  
application (*h*) to the registrar for the entry of a restriction  
against the said title number to the effect following (that is to  
say) :—Except under an order of the registrar, no transfer by the  
proprietor of the land or made in exercise of the power of sale in  
any charge subsequent to the recited Charge is to be registered  
without the consent of the proprietor for the time being of the  
recited Charge (*i*) :

Of agreement  
to hand over  
land certi-  
ficate.

AND WHEREAS it has been agreed that the Mortgagees shall  
have the custody of the land certificate :

That in case  
of conflicting  
provisions the  
security is to  
be governed  
by this Mort-  
gage.

AND WHEREAS it has been agreed that the security made up of  
these presents, the recited registered Charge, and the deposit of  
the land certificate, shall be governed by the provisions herein-

addition to a transfer in the prescribed form of the registered charge. And  
upon the payment off of the mortgage there will have to be the usual  
reconveyance in addition to an instrument of discharge on the register.

(*f*) It must be seen that the mortgagor is registered before this deed is  
delivered. If the mortgagor is purchasing registered land, this deed should  
be executed as an escrow, duly stamped, and produced to the registrar  
undated. When the mortgagor's title is registered, the date should be  
filled in and the deed delivered, see L. T. Act, 1875, s. 29. The mortgagee's  
solicitor should be given the conduct of the registration proceedings.

(*g*) This charge can, if necessary, be executed before the mortgagor is  
registered: L. T. Act, 1897, s. 9.

(*h*) See Prec. XVII. in this Section, *sup.*

(*i*) In the actual restriction the charge will be referred to by its number.

after contained, but without prejudice to the statutory powers implied under the aforesaid registered Charge :

NOW THIS INDENTURE WITNESSETH and it is HEREBY AGREED as follows :—

1. (*Receipt of money advanced and usual covenant to pay principal and interest. Forms Nos. 3, 4 and 6 in Mortgages.*) Covenant to pay.
2. (*Conveyance of land and usual proviso for redemption, adding at the end that the registered Charge is to be discharged and the land certificate handed back. See Forms Nos. 8, 9 and 9B in Mortgages, sup.*) Conveyance subject to proviso for redemption.
3. THE Borrower, for himself and his assigns, hereby covenants with the Mortgagees and with each of them that so long as any money remains due under these presents no transfer of the said freehold hereditaments, or any part thereof, is to be registered without the consent in writing of the Mortgagees or the persons deriving title under them, and that no charge (other than the recited registered Charge) is to be registered against the said title number, except in such manner that the charge will be subject to the foregoing restriction, and that the Borrower or the persons deriving title under him will from time to time (if and when occasion requires) at their own cost apply for any corresponding restriction to be imposed in place of any restriction withdrawn, and for such variations to be made in any subsisting restriction as may be reasonably required. Covenants by Mortgagor.
4. PROVIDED ALWAYS, that section sixteen of the Conveyancing and Law of Property Act, 1881, shall for the purposes of this security apply to the land certificate aforesaid as if it were a document of title within the meaning of that section (*Add Form No. 49, Mortgages, and any special provisions required.*) Provision as to production of land certificate.

IN WITNESS, &c. (k).

## 2. INSTRUMENT OF CHARGE.

(*Same as the prescribed Form No. 44, adding any special provisions in the Mortgage affecting the power of sale, right of entry, and payment of the principal and interest.*) Charge.

(k) Prec. XXII. of this Section may be used as a form of mortgage of registered leaseholds.

## No. XXXIX.

## MORTGAGE of REGISTERED LAND and TRANSFER on the REGISTER for giving effect to the same (1).

## 1. MORTGAGE.

(Same as Precedent I. of Mortgages by Absolute Owners, Group A, with such special provisions, if any, as may be required, adding at the end):

Recital of intended Transfer.

INASMUCH as it is intended that immediately after the execution of these presents the Borrower shall by an instrument of Transfer, already prepared and bearing even date herewith, transfer the said hereditaments to the Mortgagee, so as to enable him to be registered as the proprietor thereof:

Declaration that transferred land shall be subject to redemption, &c.

NOW IT IS HEREBY AGREED that the Mortgagee shall stand possessed of the hereditaments so to be transferred to him as aforesaid, subject to the proviso for redemption and other the provisions hereinbefore contained.

IN WITNESS, &c.

## 2. TRANSFER.

Transfer to Mortgagee.

(Healing and date.) For a valuable consideration I, A. B., of, &c., hereby transfer to C. D., of, &c., in fee simple the land, &c. (as in the prescribed Form No. 20).

## No. XL.

## DEEDS to effect a TRANSFER of a MORTGAGE, taken by way of registered transfer of the land.

## 1. TRANSFER OFF THE REGISTER.

THIS INDENTURE (same as Precedent I., Section II., Transfers of Mortgages, sup., adding at the end):

Recital of intended Transfer.

INASMUCH as it is intended that immediately after the execution of these presents the said [Transferor] shall, by an instrument of

Mortgages by a limited company.

(1) A difficulty has been raised at the Land Registry as to whether the mortgage stamp is sufficient to free the transfer from duty, but see r. 123. Any mortgage or charge by a limited company must be registered with the Registrar of Joint Stock Companies under Companies (Consolidation) Act, 1908, s. 93.

Transfer bearing even date herewith, transfer the said hereditaments to the said [*Transferee*], so as to enable him to be registered as proprietor thereof :

NOW IT IS HEREBY AGREED that the said [*Transferee*] shall stand possessed of the said hereditaments to be transferred to him as aforesaid, subject to such right of redemption as is now subsisting therein under the Principal Indenture, and the Borrower shall be entitled to lodge a caution to protect such right of redemption.

Declaration that transferred land shall be subject to right of redemption.

IN WITNESS, &c.

## 2. TRANSFER ON THE REGISTER.

(*Heading and date.*) For a valuable consideration, I, C. D., of, &c., hereby transfer to E. F., of, &c., in fee simple the land, &c. (*as in the prescribed Form No. 20*).

## No. XLI.

RECONVEYANCE and RETRANSFER of registered land on SATISFACTION of a MORTGAGE effected by way of registered transfer of the land.

### 1. RECONVEYANCE.

THIS INDENTURE, &c. (*same as Reconveyance, Precedent I., Part IV., Reconveyances and Releases of Mortgages, sup.*).

### 2. RETRANSFER.

(*Heading and date.*) For a valuable consideration, I, E. F., of, &c., hereby transfer to A. B., of, &c., in fee simple the land, &c. (*as in the prescribed Form No. 20*).

## No. XLII.

CLAUSES to be used in TRUST DEEDS to secure DEBENTURES where any FREEHOLD or LEASEHOLD LAND is REGISTERED or is about to be REGISTERED.

1. For the purpose of perfecting the title of the Trustees to the hereditaments hereby conveyed, and enabling the Trustees to be registered, either as proprietors thereof or of a charge thereon

As to giving effect to the title of the Trustees on the register.

or on any part thereof, under the Land Transfer Acts, 1875 and 1897, the Company shall either execute and deliver to the Trustees transfers (whether subject to incumbrances or not) of the said hereditaments or such of them as shall require registration, or of part of such hereditaments, in the form prescribed by the said Acts (which transfers shall bear even date with, but shall be executed immediately after, the execution of these presents), or shall execute and deliver to the Trustees (subject to any incumbrances entered on the register) a registered Charge, or registered Charges, of such of the said hereditaments as require registration, and in respect of which it may not be practicable or convenient for the Trustees to take transfers on the register, and every such registered Charge shall be in such form and contain such stipulations as the Trustees may reasonably require for giving effect to these presents, and shall bear even date herewith and be executed immediately after the execution of these presents.

As to getting  
in the legal  
estate in the  
registered  
freeholds.

2. THE Company shall from time to time and at all times execute all such assurances (including any assurance for getting in any legal estate (*m*) which may be left outstanding by reason of section twenty of the Land Transfer Act, 1897), and make such applications for the registration of any restriction required to protect any legal estate vested or to be vested in the Trustees or for the entry of notice in the register of any term vested or to be vested in the Trustees, and do such other acts and things as the Trustees may reasonably require for giving full effect to the security intended to be hereby created, or for facilitating or effectuating any dealings by them under the powers of these presents, including all such documents, applications and things as may reasonably be required by the Trustees for giving full effect with reference to the Land Transfer Acts, 1875 and 1897, to the security intended to be hereby given, and at any time and from time to time after the security hereby constituted has become enforceable the Company shall execute and do all such assurances, acts and things as the Trustees may reasonably

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(*m*) In the case of leaseholds, the trust deed should be executed as an escrow, and not delivered or dated till after registration of the title of the company, so that it may create a legal mortgage term, and the fees under para. E. of the L. T. Fee Order, 1908, may be saved.

require for facilitating the realization of the mortgaged premises and for exercising all the powers and discretions hereby conferred on the Trustees. And for the purposes of this clause a certificate in writing signed by the Trustees to the effect that any particular assurance, application, act or thing required by them is reasonably required by them shall be conclusive evidence of the fact.

3. THE Company hereby irrevocably appoint the Trustees to be the attorneys of the Company, and in the name and on behalf of the Company to make any application and execute and do any assurances, acts and things which the Company ought to apply for, execute and do under the provisions herein contained, including any applications, assurances or acts for the purpose of the Land Transfer Acts aforesaid, and generally to use the name of the Company in the exercise of all or any of the powers hereby conferred on the Trustees or any receiver appointed by them.

Power of  
attorney to  
Trustees.

### No. XLIII.

#### AGREEMENT *for* PRESERVING *the* RIGHTS *under a* TRUST DEED *for* SECURING DEBENTURES *notwithstanding the* EXECUTION *of a* REGISTERED CHARGE *(u)* *on* LEASEHOLDS.

THIS INDENTURE, made, &c., BETWEEN A. B. & Co., Limited, whose registered office is at — (hereinafter called the Company), of the one part, and C. D. & Co., Limited, whose registered office, &c. (hereinafter called the Trustees), of the other part :

WHEREAS these presents are supplemental to an Indenture (hereinafter called the Principal Indenture), dated, &c. (o), and made between the same parties as are parties hereto, and in the same order (being a trust deed for securing an issue by the Company of £—— debenture stock, with power to issue further

Recitals :  
Of trust deed

(u) This agreement enables the registered charge to be executed in the prescribed form without setting out the provisions of the trust deed.

(o) The trust deed must not be dated or delivered until the company are registered, but it should be stamped and executed as an escrow, to save the duty on the registered charge and the fees on the notice under L. T. Act, 1875, s. 50.

stock as therein mentioned), whereby the premises comprised in the Leases Nos. 1, 2 and 3 in the first Schedule thereto were (with other hereditaments) sub-demised by the Company (who were the registered proprietors under the Land Transfer Acts, 1875 and 1897, of the said Leases) to the Trustees by way of mortgage for securing payment of the said stock and the interest thereon:

AND WHEREAS in order to give effect to the provisions of the Principal Indenture so far as might be on the register the Company, on the — day of —, 19—, executed to the Trustees a Charge (hereinafter called the Registered Charge) in the prescribed form for securing the said sum of £— and interest, and further advances (if any), and on the — day of — 19—, the Trustees were registered as the proprietors of the Registered Charge, and notices of the sub-terms created by the Principal Indenture were entered on the register under the provisions of section fifty of the Land Transfer Act, 1875 (*q*):

AND WHEREAS upon the execution of the Registered Charge it was agreed that the same should have effect for the purposes of registered dispositions only, and should not otherwise affect the position of the Company and the Trustees under the Principal Indenture, and that these presents should accordingly be executed for effectuating such agreement:

NOW THIS INDENTURE WITNESSETH, and the parties hereto hereby agree, that notwithstanding anything contained or implied in the Registered Charge by virtue of the Land Transfer Acts, 1875 and 1897, or of any rules made thereunder (but without prejudice to any registered dispositions in favour of any purchaser or other person dealing for value with the Trustees on the faith of the Registered Charge), the provisions of

of the registered Charge (*p*), and of the registration of notices under L. T. Act, 1875, s. 50;

of agreement that the trust deed should govern the rights of the parties.

Agreement not to exercise power of sale in the Charge until the Trustees have a right to sell under the trust deed.

---

(*p*) The charge must be by one instrument and refer to all the title numbers. The Land Registry have made a difficulty as to the stamp where separate instruments were used.

(*q*) In the case of registered freeholds the land is sometimes transferred to the trustees of a trust deed securing a first issue of debentures, and the trustees are registered as proprietors of the land. Where, however, a registered charge is to be given to the trustees on the freeholds, then the conveyance of the legal estate contained in the trust deed should be protected by a restriction, see *Precedent XVII., sup.*, in place of a notice under s. 50. This Precedent can be readily adapted to the case of freeholds.

the Principal Indenture so far as the same may conflict with anything contained or implied in the Registered Charge as aforesaid shall as between the Company and the Trustees prevail, and in particular (but without prejudice as aforesaid) the Trustees shall not exercise the power of sale conferred by or implied under the Registered Charge unless under the Principal Indenture the security shall have become enforceable, or the Trustees would under the provisions of that Indenture have been otherwise entitled to dispose of the premises : And further, that (but without prejudice as aforesaid, and without prejudice to any registered disposition or dealing executed for the purpose of giving effect on the register to any disposition or dealing authorised under the Principal Indenture) the powers, rights and liabilities of the Trustees as regards the Company shall be governed by the Principal Indenture so far as may be without reference to the Registered Charge and to any powers, rights and liabilities conferred or implied thereunder.

IN WITNESS, &c.



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